DATE	DOCKET NUMBER	PROCEEDINGS
05/20/1996	67	ANSWER TO COMPLAINT by defendant USA. (adc) (Entered: 05/28/1996)
05/20/1996	68	ANSWER TO COMPLAINT by defendant PIERCE MCINTOSH. (adc) (Entered: 05/28/1996)
05/20/1996	69	ANSWER TO COMPLAINT by defendant ROBBINS. (adc) (Entered: 05/28/1996)
		* * * * *
09/13/1996	94	MOTION filed by defendant USA in 1:92-cv-02288 for judgment on the pleadings, or, in the alternative to dismiss for lack of subject matter jurisdiction; Exhibits (5). (lkn) (Entered: 09/16/1996)
		* * * * *
10/15/1996	103	MOTION filed by defendant ROBBINS in 1:92-cv-02288, defendant PIERCE MCINTOSH in 1:92-cv-02288, defendant ROBERT EDWARDS in 1:92-cv-02288, defendant FRANK KORMAN in 1:92-cv-02288,

DATE	DOCKET NUMBER	PROCEEDINGS
		defendant MICHAEL HARTMAN in 1:92-cv-02288 for summary judgment; Exhibit (1). (lkn) (Entered: 10/17/1996)
10/22/1996	104	RESPONSE by plaintiff WILLIAM G. MOORE JR. in 1:92-cv-02288 in opposition to motion for judgment on the pleadings [94-1] by USA, motion to dismiss for lack of subject matter jurisdiction [94-2] by USA; Statement of material facts and attachments (8). (lkn) (Entered: 10/23/1996)
10/22/1996	105	ANSWER TO COMPLAINT by defendant JOSEPH B. VALDER in 1:92-cv-02288. (lkn) (Entered: 10/23/1996)
		* * * * *
11/01/1996	108	REPLY by defendant USA in 1:92-cv-02288 to plaintiff's opposition to motion for judgment on the pleadings [94-1] by USA, motion to dismiss for lack of subject matter jurisdiction [94-2] USA (lkn) (Entered: 11/04/1996)

DATE	DOCKET NUMBER	PROCEEDINGS
11/22/1996	109	RESPONSE by plaintiff WILLIAM G. MOORE JR. in 1:92-cv-02288 in opposition to motion for summary judgment [103-1] by MICHAEL HARTMAN, FRANK KORMAN, ROBERT EDWARDS, PIERCE MCINTOSH, ROBBINS; Attachments (39). (lkn) (Entered: 11/25/1996)
		* * * * *
01/15/1997	115	REPLY by defendant ROBBINS in 1:92-cv-02288, defendant PIERCE MCINTOSH in 1:92-cv-02288, defendant ROBERT EDWARDS in 1:92-cv-02288, defendant FRANK KORMAN in 1:92-cv-02288, defendant MICHAEL HARTMAN in 1:92-cv-02288 in support of motion for summary judgment [103-1] by MICHAEL HARTMAN, FRANK KORMAN, ROBERT EDWARDS, PIERCE MCINTOSH, ROBBINS; Attachments (6). (lkn) (Entered: 01/16/1997)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
03/28/1997	126	MOTION filed by defendant JOSEPH B. VALDER in 1:92-cv-02288 for summary judgment (lkn) (Entered: 03/31/1997)
		* * * * *
05/02/1997	132	RESPONSE by plaintiff WILLIAM G. MOORE JR. 1:92-cv-02288 in opposition to motion for summary judgment [126-1] by JOSEPH B. VALDER.; exhibits (34) (dam) (Entered: 05/05/1997)
		* * * * *
05/19/1997	137	REPLY by defendant JOSEPH B. VALDER in 1:92-cv-02288 to response to motion for summary judgment [126-1] by JOSEPH B. VALDER (dam) (Entered: 05/20/1997)
		* * * * *
06/23/1997	141	MEMORANDUM by plaintiff BLANCHE K. MOORE in 1:92-cv- 02288, plaintiff WILLIAM G. MOORE JR. in 1:92-cv-02288 in connection with the pending summary judgment motions (dam) (Entered: 06/24/1997)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
10/14/1997	144	RESPONSE (SUPPLEMENTAL) by plaintiff BLANCHE K. MOORE in 1:92-cv-02288, plaintiff WILLIAM G. MOORE JR. in 1:92-cv-02288 in opposition to motion for judgment on the pleadings [94-1] USA. (dam) (Entered: 10/16/1997)
10/30/1997	145	RESPONSE by defendant USA in 1:92-cv-02288 to opposition to UNITED STATES motion for judgment on the pleadings [144-1] by WILLIAM G. MOORE JR., BLANCHE K. MOORE (dam) (Entered: 11/04/1997)
02/05/1998	146	ORDER by Chief Judge Norma H. Johnson: granted in part and denied in part the motion to strike affidavit and amended local rule 108(h) statement[131-1]by MICHAEL HARTMAN, FRANK KORMAN, ROBERT EDWARDS, PIERCE MCINTOSH, ROBBINS, granting in part and denying in part

DATE	DOCKET NUMBER	PROCEEDINGS
		motion to strike affidavit and plaintiff's local rule 108 (h) statement [136-1] by JOSEPH B. VALDER, granting motion for summary judgment [126-1] by JOSEPH B. VALDER, denying motion to clarify Order of September 16, 1996, staying discovery [125-1] by WILLIAM G. MOORE JR., denying as moot the motion for summary judgment [103-1] by MICHAEL HARTMAN, FRANK KORMAN, ROBERT EDWARDS, PIERCE MCINTOSH, ROBBINS, granting motion for judgment on the pleadings [94-1] by USA denying as moot the motion to dismiss for lack of subject matter jurisdiction [94-2] by USA; ORDERED that discovery on plaintiff's Bivens claim of retaliatory prosecution against the postal inspectors proceed as indicated in this Opinion; and it is further ORDERED by the Court, sua sponte, that plaintiff's Bivens claim of

DATE	DOCKET NUMBER	PROCEEDINGS
		retalitory prosecution against the postal inspectors be, and hereby is, referred to Magistrate Judge Kay for discovery and pretrial. Unless otherwise ordered by this Court, contested preliminary motions within Local Rule 209 will likewise be heard by Magistrate Judge Kay. All other motions will be heard by the Court. (N) (dam) (Entered: 02/06/1998)
02/05/1998	147	MEMORANDUM OPINION by Chief Judge Norma H. Johnson (N) (dam) (Entered: 02/06/1998)
		* * * * *
06/22/1998	170	MOTION filed by plaintiff BLANCHE K. MOORE in 1:92-cv-02288, plaintiff WILLIAM G. MOORE JR. in 1:92-cv-02288 for reconsideration of order [146-1] , or in the alternative for entry of final judgment; exhibits (4) (tlh) Modified on 06/25/1998 (Entered: 06/25/1998)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
08/14/1998	186	MEMORANDUM by defendant USA in 1:92-cv-02288, defendant JOSEPH B. VALDER in 1:92-cv-02288 in opposition to motion for reconsideration of order [146-1] [170-1] by WILLIAM G. MOORE JR., BLANCHE K. MOORE and in response to motion for entry of final judgment [170-2] by WILLIAM G. MOORE JR., BLANCHE K. MOORE (cjp) (Entered: 08/20/1998)
		* * * * *
09/18/1998	190	REPLY by plaintiff WILLIAM G. MOORE JR. in 1:92-cv-02288 to response to motion for reconsideration of order [146-1] [170-1] by WILLIAM G. MOORE JR., BLANCHE K. MOORE, motion for entry of final judgment [170-2] by WILLIAM G. MOORE JR., BLANCHE K. MOORE (tlh) (Entered: 09/23/1998)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
05/06/1999	200	MEMORANDUM OPINION by Chief Judge Norma H. Johnson (N) (dot) (Entered: 05/07/1999)
05/06/1999	201	ORDER by Chief Judge Norma H. Johnson: denying motion for reconsideration of order [146-1] [170-1] by WILLIAM G. MOORE JR., BLANCHE K. MOORE in 1:92-cv-02288, granting motion for entry of final judgment [170-2] by WILLIAM G. MOORE JR., BLANCHE K. MOORE in 1:92-cv-02288 (N) (dot) (Entered: 05/07/1999)
05/06/1999	202	JUDGMENT by Chief Judge Norma H. Johnson in favor of defendant JOSEPH B. VALDER in 1:92-cv-02288 as to plaintiff's BIVENS claim of retaliatory prosecution; judgment in favor of the USA as to plaintiff's claims of malicious prosecution and abuse of process under the Federal Tort Claims Act. (dot) (Entered: 05/07/1999)

* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
06/04/1999	204	NOTICE OF INTERLOCUTORY APPEAL by plaintiff WILLIAM G. MOORE JR. in 1:92-cv-02288 from judgment order [202-1] , entered on: 05/07/99; $105.00 FILING FEE PAID; copies mailed to Richard Montague, Andrea W. McCarthy, James E. Anklam, Daniel H. Bromberg, Paul M. Pohl, David F. Legge & Joseph M. David (tb) Modified on 06/07/1999 (Entered: 06/07/1999)
		* * * * *
07/28/2000	219	CERTIFIED COPY of Order filed in USCA dated 6/2/00, referencing appeal [204-1] in 1:92-cv-02288, appeal [34-1] in 1:93-cv-00324, affirming the judgment of USDC in part, and reversing the judgment of USDC in part OPINION USCA # 99-5197 & 99-5198 (cjp) (Entered: 07/28/2000)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
07/30/2001	253	MOTION filed by defendant USA in 1:92-cv-02288 for summary judgment and oral argument requested; exhibits (60) (cjp) (Entered: 07/31/2001)
07/30/2001	254	MOTION filed by defendant ROBBINS in 1:92-cv-02288, defendant PIERCE MCINTOSH in 1:92-cv-02288, defendant ROBERT EDWARDS in 1:92-cv-02288, defendant FRANK KORMAN in 1:92-cv-02288, defendant MICHAEL HARTMAN in 1:92-cv-02288 for summary judgment and oral argument requested; exhibits (60) (cjp) (Entered: 07/31/2001)
		* * * * *
12/07/2001	267	MEMORANDUM by plaintiffs in 1:92-cv-02288 in opposition to motion for summary judgment and oral argument requested [254- 1] by MICHAEL HARTMAN, FRANK KORMAN, ROBERT EDWARDS, PIERCE MCINTOSH, ROBBINS; (FILED UNDER SEAL IN ROOM 1800) Volumes 1-10 (bjsp) (Entered: 12/13/2001)

DATE	DOCKET NUMBER	PROCEEDINGS
12/07/2001	268	MEMORANDUM by plaintiffs in 1:92-cv-02288 in opposition to motion for summary judgment and oral argument requested [253-1] by USA; (FILED UNDER SEAL IN ROOM 1800); volumes 1-10 (bjsp) (Entered: 12/13/2001)
	* * * * *	
02/28/2002	272	REPLY by defendant ROBBINS in 1:92-cv-02288, defendant PIERCE MCINTOSH in 1:92-cv-02288, defendant ROBERT EDWARDS in 1:92-cv-02288, defendant FRANK KORMAN in 1:92-cv-02288, defendant MICHAEL HARTMAN in 1:92-cv-02288 in support of motion for summary judgment and oral argument requested [254-1] by MICHAEL HARTMAN, FRANK KORMAN, ROBERT EDWARDS, PIERCE MCINTOSH, ROBBINS; exhibits (1) (cdw) (Entered: 03/04/2002)

DATE	DOCKET NUMBER	PROCEEDINGS
02/28/2002	273	REPLY by defendant USA in 1:92-cv-02288 in support of motion for summary judgment and oral argument requested [253-1] by USA; exhibits (2) (cdw) (Entered: 03/04/2002)
		* * * * *
08/05/2003	283	ORDER by Judge Norma H. Johnson: denying defendant's motion for summary judgment (N) (adc) (Entered: 08/06/2003)
		* * * * *
09/04/2004	284	NOTICE OF APPEAL by defendant ROBBINS in 1:92-cv-02288, defendant PIERCE MCINTOSH in 1:92-cv-02288, defendant ROBERT EDWARDS in 1:92-cv-02288, defendant FRANK KORMAN in 1:92-cv-02288 from order [283-1], entered on: August 05, 2003. No fee paid. U.S. Gov't. (jf) (Entered: 09/08/2003)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
03/31/2004	291	First MOTION for ruling re [271] Motion to Strike by UNITED STATES OF AMERICA. (Attachments: # 1 Text of Proposed Order) (McCarthy, Andrea) (Entered: 03/31/2004)
03/31/2004	292	MOTION for Reconsideration re 283 Order denying defendant's motion for summary judgment (for scanned image, see Doc. 291) by UNITED STATES OF AMERICA. (cp,) (Entered: 04/01/2004)
04/14/2004	293	Memorandum in opposition to motion re 291 *ruling on motion to strike and reconsideration of order entering summary judgment* filed by WILLIAM G. MOORE JR.. (Attachments: #1 Exhibit A #2 Text of Proposed Order) (Bromberg, Daniel) (Entered: 04/14/2004)
04/23/2004	294	REPLY to opposition to motion re 291 filed by UNITED STATES OF AMERICA. (McCarthy, Andrea) (Entered: 04/23/2004)

DATE	DOCKET NUMBER	PROCEEDINGS
08/30/2004	295	ORDER denying 291 Motion for Ruling, denying [292] Motion for Reconsideration. Signed by Judge Ricardo M. Urbina on 8/30/04. (Entered: 08/30/2004)
08/30/2004	296	MEMORANDUM OPINION. Signed by Judge Ricardo M. Urbina on 8/30/04. (Entered: 08/30/2004)
		* * * * *
04/04/2005	306	USCA JUDGMENT (certified copy) as to [284] Notice of Appeal, filed by FRANK KORMAN,, ROBERT EDWARDS,, PIERCE MCINTOSH,, ROBBINS; It is hereby ordered and adjudged that the judgment of the District Court appealed from in this cause is hereby affirmed and case remanded; USCA#03-5241 (jsc) (Entered: 04/11/2005)
		* * * * *

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 03-5241

WILLIAM G. MOORE, JR., PLAINTIFF-APPELLEE

v.

MICHAEL HARTMAN, ET AL., DEFENDANT-APPELLANTS

DOCKET ENTRIES

DATE	PROCEEDINGS
9/8/03	CIVIL-US CASE docketed. Notice of Appeal filed by Appellant Michael Hartman, Appellant Frank Korman, Appellant Robert Edwards, Appellant Pierce McIntosh, Appellant Norman Robbins. [770895-1] (sha)
	* * * * *
10/27/03	MOTION filed (with an attached appendix) by the Appellee William G. Moore, Jr. (certificate of mail service dated 10/27/03) to dismiss this appeal for want of jurisdiction [781120-1]. Response due by 11/10/03. (jth)
	* * * * *
11/17/03	OPPOSITION filed [785550-1] (5 copies) by the Appellants Michael Hartman, et al., (certificate of mail service dated 11/17/03) to plantiff/appellee's motion to dismiss appeal for want of jurisdiction [781120-1]. (jth)

DATE	PROCEEDINGS
	* * * * *
12/12/03	REPLY filed [791284-1] (5 copies) by Appellee William G. Moore (certificate of mail service dated 12/12/03) to a response to the motion dismiss case lack/jurisdiction [781120-1]. (sha)
2/20/04	PER CURIAM ORDER filed [804620] referring motion to dismiss to the merits panel to which this case is assigned. The parties are directed to address in their briefs the issues presented in the motion to dismiss rather than incorporate those arguments by reference. The Clerk is instructed to calendar this case for presentation to a merits panel. Before Judges Sentelle, Rogers. [Entry Date: 2/20/04] (jlp)
	* * * * *
5/3/04	BRIEF filed by Appellant Michael Hartman, et al. [820319-1]. Copies: 8. Certificate of mail service date 5/3/04. (sha)
	* * * * *
6/16/04	BRIEF filed by the Appellee William G. Moore [829741-1]. (Copies: 7). Certificate of mail service dated 6/16/04. (jth)
	* * * * *

DATE	PROCEEDINGS
7/2/04	CORRECTED REPLY BRIEF filed by Appellants Michael Hartman, et al., [834108-1]. (Copies: 7). Certificate of service by mail dated 7/2/04. (jth)
7/7/04	FINAL BRIEF filed by Appellants Michael Hartman, et al., [834427-1]. (Copies: 15). Certificate of service by mail dated 7/7/04. (jth)
7/7/04	FINAL BRIEF filed by Appellee William G. Moore [834428-1]. (Copies: 15). Certificate of mail service dated 7/7/04. (jth)
7/7/04	FINAL REPLY BRIEF filed by Appellants Michael Hartman, et al., [834430-1]. (Copies: 15). Certificate of mail service dated 7/7/04. (jth)
7/7/04	DEFERRED APPENDIX (VOLUMES I - II) filed by the Appellants Michael Hartman, et al., [834431-1]. (Copies: 10). Certificate of mail service dated 7/7/04. (jth)
	* * * * *
9/15/04	ORAL ARGUMENT HELD before Sentelle, Tatel, Williams. (set)
11/9/04	JUDGMENT that the decision of the district court be affirmed and the case remanded for the reasons in the accompanying opinion. Before Judges Sentelle, Tatel, Williams. [Entry Date: 11/9/04] (mcm)

DATE	PROCEEDINGS
11/9/04	OPINION filed [858768] (26 pgs) for the Court by Judge Tatel (mcm)
11/9/04	CLERK'S ORDER filed [858770] The Clerk is directed to withhold issuance of the mandate [858770-1] pending disposition of any timely petition for rehearing. [Entry Date: 11/9/04] (mcm)
	* * * * *
11/22/04	MOTION filed (5 copies) by Appellant Michael Hartman, et al. (certificate of mail service dated 11/22/04) for clarification [863886-1] of clerk order withholding mandate [858770-1]. (sha)
12/7/04	PER CURIAM ORDER filed [863989] granting motion clarify filed by Michael Hartman, et al. [863886-1]. Any petition for rehearing and/or petition for rehearing en banc is due on December 27, 2004. An explanation will issue at a later date. Before Judges Sentelle, Tatel, Williams. [Entry Date: 12/7/04] (mcm)
12/27/04	PETITION filed (Copies: 19) by Appellants Michael Hartman, et al. (certificate of service dated 12/27/04) for rehearing en banc [868240-1]. (mcm)

DATE	PROCEEDINGS
1/31/05	PER CURIAM ORDER, In Banc, filed [873717] denying petition rehearing en banc [868240-1] filed by Michael Hartman, Kormann, Robert Edwards, Pierce McIntosh, Norman Robbins. (Mandate may issue on or after 2/8/05). Before Judges Ginsburg, Edwards, Sentelle, Henderson, Randolph, Rogers, Tatel, Garland,* Roberts, Williams. (Circuit Judge Garland did not participate in this matter) [Entry Date: 1/31/05] (mcm)
	* * * * *
2/4/05	MOTION filed (5 copies) by Appellants Michael Hartman, et al., (certificate of service by mail dated 2/4/05) for stay of issuance of the mandate [875542-1]. Response due by 2/22/05. (jth)
2/16/05	RESPONSE filed [878670-1] (5 copies) by Plaintiff/Appellee William G. Moore (certificate of mail service date 2/16/05) to appellants' motion for stay of issuance of the mandate [875542-1]. (jth)
2/28/05	REPLY filed [880891-1] (5 copies) by Federal Appellants Michael Hartman, et al., (certificate of service by mail dated 2/28/05) in support of their motion for stay of the issuance of the mandate [875542-1]. (jth)

DATE	PROCEEDINGS
3/8/05	PER CURIAM ORDER filed [882336] granting motion stay mandate filed by Michael Hartman, et al. [875542-1]. The Clerk is directed to withhold issuance of the mandate [882336-1] until 3/17/05. Before Judges Sentelle, Tatel, Williams. [Entry Date: 3/8/05] (mcm)
3/14/05	MOTION filed (5 copies) by Appellants Michael Hartman, et al., (certificate of mail service dated 3/14/05) to extend the stay of issuance of mandate [884312-1]. Response due by 3/28/05. (jth)
3/16/05	PER CURIAM ORDER filed [884340] denying motion stay mandate [884312-1] filed by Michael Hartman, et al. Before Judges Sentelle, Tatel, Williams. [Entry Date: 3/16/05] (mcm)
3/31/05	MANDATE ISSUED to Clerk, District Court [886985-1] (mcm)
	* * * * *
5/13/05	NOTICE filed by Clerk, Supreme Court advising of the filing on 5/9/05 & docketing on 5/10/05 of a petition for writ of certiorari [894713-1]. Supreme Court Docket No. 04-1495. (jth)

DATE	PROCEEDINGS
7/1/05	NOTICE filed by William K. Suter, Clerk, informing the court that the petition for writ of certiorari was granted limited to Question 1 presented by the petition, No. 04-1495 [908623-1]. (lvs)

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action No. 3-91CV2491-G

WILLIAM G. MOORE, JR. AND
BLANCHE K. MOORE, PLAINTIFFS

v.

JOSEPH B. VALDER, MICHAEL HARTMAN, FRANK KORMAN, ROBERT EDWARDS, PIERCE MCINTOSH, DANIEL HARRINGTON, (FIRST NAME UNKNOWN) ROBBINS, AND OTHERS AS OF YET UNKNOWN, HEREBY DESIGNATED AS JOHN DOE DEFENDANTS 1-25

[Filed: Nov. 19, 1991]

ORIGINAL COMPLAINT

I. JURISDICTION AND VENUE

1. The jurisdiction of this Court is invoked under Title 28 U.S.C. §§ 1331 and 1367(a). This suit is authorized by the First, Fourth and Fifth Amendments of the Constitution of the United States and such other State and Federal laws as may be applicable. Venue in this action is properly situated in the United States District Court for the Northern District of Texas pursuant to 28 U.S.C. §§ 1391(b) and (e). Plaintiffs seek damages in excess of $50,000 for injuries sustained by them which were caused by the actions of the defendants.

II. PARTIES

2. Plaintiff William G. Moore, Jr. is a citizen of the United States who resides in Dallas, Texas. Plaintiff is

the former Chairman, President and Chief Executive Officer of Recognition Equipment Incorporated ("REI").

3. Plaintiff Blanche K. ("Chelen") Moore is the wife of Plaintiff William G. Moore, Jr. and resides with him in Dallas, Texas.

4. Defendants are employees of the United States Government and its agencies, including the United States Department of Justice and the United States Postal Service ("USPS"), who, acting in their ministerial and individual capacities, did conspire to interfere with and violate, and did interfere with and violate, plaintiffs' rights and privileges, and did deprive Plaintiff William G. Moore, Jr. of his liberty and both plaintiffs of their property without due process of law, in conflict with the laws and Constitution of the United States and the laws of the State of Texas and the District of Columbia, as more fully appears herein below. Such defendants include:

a. Defendant Joseph Valder, who was at all relevant times an Assistant U.S. Attorney for the District of Columbia. Said defendant was responsible for the investigation and the overseeing of the Grand Jury investigation which culminated in the wrongful indictment of Plaintiff William G. Moore, Jr. Defendant Valder, acting individually and/or in concert with the other defendants, also was responsible for the pre-trial activities and trial of the case against Plaintiff William G. Moore, Jr. Said defendant is sued in his individual capacity.

b. Defendants Frank Korman, Michael Hartman, Robert Edwards, Pierce McIntosh, Daniel Harrington (first name unknown) Robbins, and Postal

Inspectors and other employees of the USPS who are presently unknown to plaintiffs (and hereinafter are referred to as "John Doe defendants 1-25"), and who were at all relevant times Postal Inspectors of the United State Postal Inspection Service or otherwise employed by the USPS. Defendants Korman and Hartman oversaw the investigation and were involved at all relevant stages. Each defendant Postal Inspector is sued in his own individual capacity. All of the defendant Postal Inspectors, whether known or unknown, shall be referred to collectively as "Postal Inspectors."

III. NATURE OF THIS CASE

5. The incidents on which plaintiffs' lawsuit is based occurred as a result of malicious, deliberate, intentional, reckless and negligent misconduct by Assistant United States Attorney Joseph Valder and the U.S. Postal Inspection Service and its agents, as named and/or described above, before, during, and after a Grand Jury investigation which culminated in an indictment being returned against Plaintiff William G, Moore, Jr., REI, and another employee of REI on October 6, 1988 in Washington, D.C. All defendants in the indictment were acquitted of all charges by United States District Judge George Revercomb on November 20, 1989. It became apparent that the investigation, Grand Jury proceedings and handling of the post-indictment proceedings by the defendants were punctuated by gross violations and abuses of plaintiffs' rights as detailed below.

6. This action is brought to seek fair compensation for the catastrophic financial injury, humiliation, mental suffering and anguish inflicted upon plaintiffs as a result of the wrongful acts of defendants. This action is

also filed to ensure that these defendants and others are deterred from engaging in such wrongful activity again.

IV. FACTS

7. Plaintiff William G. Moore, Jr. is the former Chairman, Chief Executive Officer and President of REI. He is a graduate of Georgetown University and has served on its Board of Regents. He served in the U.S. Army, obtaining the rank of Captain, and saw service in Vietnam. REI was a manufacturer of, among other products, optical character recognition ("OCR") systems. The Company was at all relevant times headquartered in Irving, Texas. At the time Moore joined REI in 1982, the company, which had suffered losses for five years, had lost $14.2 million in the preceding year and was on the verge of bankruptcy. Within one year, Moore had turned REI around, and REI reported net income of $9.5 million. By 1985, REI had reached $241.8 million in revenues, and it was considered one of the most dynamic and successful publicly-held corporations in the Dallas area. Because of his success, Moore was the recipient of various significant honors from organizations across the country, including being named Dallas Business Man of the Year. He served as Chairman of the American Electronics Association and or the Boards of various civic and charitable organizations.

8. REI had developed multi-line optical character reading ("MLOCR") equipment which would automatically read several lines of an address to code and assign a nine-digit zip code to a piece of mail. REI desired to sell the product to USPS. REI believed it would speed up the mail system and save USPS millions of dollars per year.

9. At the time relevant to the charges in the indictment, USPS was employing single-line OCR equipment which could only read the bottom line of an address, and the efficiency of single-line technology was dependent upon the public use of the nine-digit zip code. The, single-line OCR technology was not successful because the public use of the nine-digit zip code did not meet LISPS' expectations. Since the indictment, USPS has converted its automated sorting equipment to multi-line technology.

10. At the time of Moore's arrival at REI, there had been a longstanding conflict between REI and various senior managers within USPS. In late 1983, then, Postmaster General William Bolger announced that there would be no future for multi-line technology in the automation plans of USPS. One high-ranking postal manager stated that REI would never receive any multi-line production awards as long as he was with USPS.

11. After the single-line decision by USPS, Plaintiff William G. Moore, Jr. informed Postmaster General Bolger that single-line technology was an unsound strategy, and that Moore intended to go directly to USPS Board of Governors, the media, and the United States Congress to try and stop the ineffective and wasteful single-line implementation. Moore did, in fact, —as he was Constitutionally permitted to do—communicate about the subject with various Congressmen and Senators, including Texas Congressmen Jack Brooks and the late Mickey Leland, Missouri Congressman Richard Gephardt and Alaska Senator Ted Stevens. As previously noted, USPS now uses the multi-line approach advocated by REI.

12. In the course of REI's efforts to obtain contracts from USPS, which was supposed to review in an open, fair and impartial manner all competing technologies for mail scanning and sorting equipment, REI hired the consulting firm of Gnau and Associates, Inc. ("GAI"). John Gnau was a principal of GAI. The use of this consulting firm had been suggested to REI by a member of the USPS Board of Governors.

13. In early 1985, the U.S. Postal Inspection Service began an investigation into possible illegal payments from Gnau to Peter E. Voss, then a member of the USPS Board of Governors. It was later determined that a conspiracy in which Gnau made illegal payments to Voss existed between Voss, John Gnau, Michael Marcus (the Treasurer of GAI) and William Spartin (President of GAI). Voss, Gnau and Marcus pled guilty to criminal charges. Spartin and Sharon Peterson, an administrative assistant to Voss, agreed to cooperate in exchange for immunity from prosecution. Frank Bray, REI's Vice President of Distributor Sales, also received immunity.

14. During the investigation, Defendant Valder and the Postal Inspectors, including at least Defendants Hartman and Korman as well as various other unknown defendants, desperately tried to find a way to link William G. Moore Jr., to the conspiracy. However, the evidence clearly and unequivocally demonstrated that Moore knew absolutely nothing about the conspiracy. None of the thousands of documents subpoenaed by the Grand Jury during the investigation indicated that Moore, or for that matter REI, had knowledge of the conspiracy and related unlawful activities. Moore repeatedly informed the Postal Inspectors and AUSA Valder that he had no knowledge of the conspiracy.

None of the five admitted conspirators—Voss, Gnau, Marcus, Peterson and Spartin—gave any testimony even remotely indicating that Moore knew of, or participated in, that conspiracy. In fact, several conspirators testified at trial that they actively tried to disguise the conspiracy from Moore and had previously told that to Valder and certain of the other defendants.

15. The obvious issue in any criminal action against Moore would be whether he had knowledge of and participated in the conspiracy or the unlawful acts of the consultants and Voss. The evidence gathered in the massive investigation showed clearly and without exception that Moore had no knowledge of the conspiracy or the unlawful acts. The Postal Inspectors and AUSA Valder knew that such lack of knowledge would prevent the return of any proper indictment against Moore. Notwithstanding the above, Defendants Valder, Hartman, Korman, Edwards, McIntosh, Harrington, Robbins, and the John Doe defendants who are presently unknown to plaintiffs, deliberately, systematically and without regard to Moore's Constitutional right to fair investigation and fair consideration by the Grand Jury, concealed from the Grand Jury crucial and extensive exculpatory testimony from the co-conspirators (Gnau, Peterson, Marcus, Spartin and Voss) that Moore was not told about, and did not know about, the unlawful scheme to pay kickbacks to Voss.

16. Defendants engaged in unusual, unlawful and unconstitutional investigative techniques to intimidate and coerce witnesses to try to implicate Moore and to control the flow of information to the Grand Jury in order to mislead the Grand Jury to return an indictment when none was warranted. These activities were done in clear disregard of the defendants' obligations as

employees of the United States; these activities were done by defendants with malice and in clear violation of Moore's right to a fair investigation; these activities were done by defendants in an attempt to obtain publicity for themselves and seek career advancement; and these unlawful activities were done by defendants in an attempt to "punish" Moore for exercising his constitutionally-protected rights to criticize USPS procurement decisions.

17. By concealing and distorting the evidence as they did, AUSA Valder and the Postal Inspectors acted outside their discretion, violated their employer's policies and procedures, and knowingly violated plaintiffs' clearly established Constitutional rights. The methods designed by the defendants to withhold key exculpatory evidence and to manufacture false and misleading testimony are detailed below.

18. AUSA Valder and the Postal Inspectors drafted and used written "witness statements" to shape the evidence presented to the Grand Jury. These misleading "witness statements" were false, inaccurate, incomplete and misleading and were presented to the Grand Jury even though live witnesses were available to testify. Even though all the witnesses told AUSA Valder and the Postal Inspectors that Moore was unaware of the conspiracy, not one single witness statement written by the Postal Inspectors included this crucial, exculpatory statement. Additionally, AUSA Valder and the Postal Inspectors refused to allow witnesses to amend these statements, even though it was supposedly the witnesses', not the Postal Inspectors', statements. These statements were thereafter presented to the Grand Jury as the witnesses' own statements. For example, Frank Bray was interviewed several times in an

intimidating fashion by the Postal Inspectors, including Inspectors Edwards and Harrington, in an attempt to have him change his testimony that Moore was unaware of the conspiracy. Incredibly, AUSA Valder and the Postal Inspectors refused to allow Bray to include in "his" statement that, to his knowledge, REI and Moore were not aware of the payoffs. Bray and his attorney Ellen Huvelle (now a Judge on the Superior Court of the District of Columbia) amended their version of Bray's statement to include such language, but the Postal Inspectors refused to change it. Moreover, Bray and Ms. Huvelle were not permitted to take the amended version of Bray's statement with them after their meeting with the Postal Inspectors, and the amended version mysteriously disappeared by the time of trial. The Grand Jury was thereafter read the statement written by the Postal Inspector, which purported to be Bray's statement, without the exculpatory statement. Additionally, AUSA Valder promised Bray and Ms. Huvelle that he would ask Bray the key questions about Moore's knowledge in the Grand Jury, but Valder thereafter refused to do so.

19. John Gnau and Peter Voss were the two leaders of the conspiracy. Gnau repeatedly told the Postal Inspectors that he never told Moore about his illicit relationship with Voss. However, "his" statement written by the Postal Inspectors deliberately omitted this fact. Voss, who was serving a prison sentence on these charges and was clearly available to the Government, was never called by the Government to testify at trial.

20. Despite the fact that Postal Inspectors are trained to take detailed notes, virtually none of the notes taken by Postal Inspectors during their interviews of various witnesses contained the witnesses'

crucial statements to the effect that Moore was not told of the conspiracy. These key statements were deliberately omitted by the Postal Inspectors in order to avoid their responsibility to conduct a fair investigation and to preserve exculpatory material.

21. AUSA Valder and the Postal Inspectors threatened and intimidated William Spartin in an attempt to coerce incriminating testimony from him after he repeatedly told the Government that to his knowledge, Moore did not know of the payoffs to Voss. Such tactics included a pre-planned tearing-up of Spartir's immunity letter in front of him and threats to prosecute Spartin's son. This was despite the fact that a lie detector test had indicated that Spartin was being truthful when he said Moore and REI were not informed of the conspiracy. Moreover, unbeknownst to Spartin, the lie detector test was conducted by Inspector Robbins, who repeatedly tried to trick and coerce Spartin into giving incriminating testimony against Moore.

22. AUSA Valder and the Postal Inspectors, including Inspector McIntosh, violated Federal Rule of Criminal Procedure 6(e)(2), which protects the secrecy of Grand Jury proceedings, by giving Spartin and former Postmaster General Paul Carlin access to the Grand Jury testimony of other witnesses for the purpose of influencing Spartin's testimony and for the apparent purpose of assisting Carlin, a private plaintiff, to pursue civil litigation in connection with his dismissal from the Postal Service. The Postal Inspectors even gave Carlin a copy of a draft indictment for his review.

23. AUSA Valder deliberately withheld *Brady v. Maryland* exculpatory material from attorneys for Moore and REI before and during their trial, despite a court order to turn over even "borderline" *Brady*

material. Such *Brady* material included the results of lie detector tests in which Mr. Spartin made 19 references to Moore's and REI's lack of knowledge as to the conspiracy, and the amended version of Frank Bray's statement in which he added a paragraph that to his knowledge, Moore and REI were unaware of the payoffs. If this material had been turned over to the defense as it should have been, Moore would likely have been spared the expense and humiliation of a long, extensively publicized trial.

24. Through the use of the above malicious, improper and unconstitutional tactics, AUSA Valder and the defendant Postal Inspectors were able to obtain an indictment against William G. Moore, Jr. However, nowhere in the 46-page conspiracy charge—nowhere in its 10 objects, 58 means and methods or 96 overt acts—did the charge allege that Moore or REI even know that GAI was paying bribes to Voss, much less that they agreed to these payments. This deliberate attempt to hide the only real issue in the indictment by pure volume and verbosity was not successful. Following the Government's presentation of its case at trial, Judge George Revercomb acquitted Moore and all other defendants.

25. After the indictment, REI was debarred from all postal procurements. The United States forced REI to place Moore on leave of absence and to sever him from any management involvement with REI. As a result of the indictment, the Company began to flounder and the stock price plunged. The company was eventually the subject of a takeover attempt, had a change of control and Plaintiff William G. Moore, Jr. lost his job. The wrongful investigation/indictment and prosecution prevented REI from bidding, and in all probability win-

ning, hundreds of millions of dollars in postal automation contracts. The wrongful investigation/indictment caused the plaintiffs to sustain severe financial injury.

26. Following the indictment, Plaintiff William G. Moore, Jr. was subjected to the various aspects of criminal justice system processing, including arraignment and fingerprinting. He was processed not once, but twice; one time by the Postal Inspectors, and the second time by the District of Columbia police. He was briefly jailed in the District of Columbia during this processing.

27. There was a tremendous amount of media publicity during the unlawful investigation, following the indictment and during the trial, all of which caused plaintiffs humiliation, physical and mental suffering and anguish, and which required medical treatment for both plaintiffs.

28. The indictment named as part of the overt acts of the conspiracy such Constitutionally protected actions as the plaintiffs' lobbying of Congress for changes to the mail system. The defendants also sought to prosecute Plaintiff William G. Moore, Jr. for suggesting qualified candidates for the position of Postmaster General, even though he had been requested to do so by the White House and was Constitutionally entitled to do so.

29. As a result of the above-described unlawful activity and violations of plaintiffs' Constitutional rights, plaintiffs suffered and continue to suffer great financial losses, humiliation, embarrassment, physical and mental suffering, as well as loss of reputation in and among business associates, friends, and family.

30. As a result of the above-described unlawful activity and violations of plaintiffs' Constitutional rights,

including voluminous unreasonable requests for personal and business documents, including tax returns and bank records, and alleged surveillance and possibly wiretaps, defendants did invade the privacy of the plaintiffs and cause them injury.

31. AUSA Valder and the Postal Inspectors are not entitled to official immunity for the following reasons:

a. The actions of AUSA Valder and the Postal Inspectors and the John Doe defendants violated clearly established Constitutional rights which a reasonable person would have known and recognized.

b. AUSA Valder and the Postal Inspectors and the John Doe defendants took the described actions with the malicious intention to cause injury to plaintiff and to cause deprivation of plaintiffs' constitutional rights.

c. AUSA Valder and the Postal Inspectors had no discretion to act as they did since they violated, ignored and otherwise failed to comply with regulations and policies designed to guide their actions. The investigative tactics used were so extreme that no reasonable person would accept them as fair and lawful.

d. The Postal Inspectors undertook certain unlawful and improper actions on their own accord without direction from their supervisors or the United States Attorney's Office, including the disclosure of secret Grand Jury material or witnesses, as stated in the United States Department of Justice Office of Professional Responsibility's letter dated May 30, 1991.

e. AUSA Valder acted in an investigative capacity during the course of the investigation, thereby losing his objectivity and violating his duty to fairy uphold the laws of the United States.

f. AUSA Valder acted in a non-advocatory role during the investigation, especially when he withheld, and failed to preserve, exculpatory evidence.

g. AUSA Valder continually provided inaccurate and misleading legal advice to the Postal Inspectors investigating the case.

FIRST CAUSE OF ACTION

32. By the aforesaid withholding of exculpatory evidence and by the presentation of false and misleading evidence to the Grand Jury, the defendants deprived the plaintiffs of their rights to due process and to an informed, fair and impartial Grand Jury as guaranteed by the Fifth Amendment of the United States Constitution.

SECOND CAUSE OF ACTION

33. The aforesaid actions of defendants constituted a slander and defamation of Plaintiff William G. Moore, Jr. The actions taken also constituted an unlawful invasion of plaintiffs' privacy, false arrest and abuse of process and malicious prosecution, all in violation of the laws of the State of Texas and of the District of Columbia, which this court may adjudicate as pendant to the other four, causes of action.

THIRD CAUSE OF ACTION

34. By the aforesaid improper and malicious activities, the defendants deprived the plaintiffs of their property without due process of law as guaranteed by

the Fifth Amendment to the United States Constitution.

FOURTH CAUSE OF ACTION

35. By the aforesaid improper and malicious activities, the defendants deprived the plaintiffs of their rights to be free from unreasonable seizures as guaranteed by the Fourth Amendment of the United States Constitution, in that Plaintiff William G. Moore, Jr. was seized as he awaited processing, and furthermore, plaintiffs were forced to post bond and attend a trial based upon the improperly obtained indictment.

FIFTH CAUSE OF ACTION

36. By the aforesaid improper and malicious activities, which caused plaintiffs to deplete financial and human resources, the defendants attempted to punish Plaintiff William G. Moore, Jr. because he directed criticism against the USPS, thereby depriving the Plaintiffs of their rights to free expression and to petition the government for redress of grievances guaranteed by the First Amendment of the United States Constitution.

DAMAGES

37. As a result of the investigation and indictment, REI stock, of which Plaintiff William G. Moore, Jr. owned more than 100,000 shares, dropped from about $22 per share to about $5 per share. A change of control at REI occurred during the trial which would not have taken place if there had not been an indictment. As a result, Plaintiff William G. Moore, Jr. lost his job and suffered extensive financial injury.

38. In the three years prior to the indictment, Plaintiff William G. Moore, Jr.'s average compensation was

more than $1 million per year. After the indictment, the value of Moore's stock ownership declined from $2 million to $500,000. Plaintiff William G. Moore, Jr.'s stock options decreased in value by at least another $2 million, and his annual income was, and has been, greatly reduced.

39. As further result of the indictment, Plaintiff William G. Moore, Jr. has been unable to find a position comparable to his previous employment. Plaintiff's reputation has been damaged, and he has been forced to resign from a number of boards and appointments.

40. The ordeal of investigation, indictment and trial has exacted a terrible physical and emotional toll on plaintiffs. Shortly after being notified of the impending indictment in late summer of 1988, Plaintiff William G. Moore, Jr. was treated at the emergency room at Parkland Hospital in Dallas for symptoms which were subsequently diagnosed as an acute stress reaction. Since the investigation began, Plaintiff Blanche Moore has suffered from chronic insomnia combined with Temporomandibular joint disorder (often called TMJ). She is currently under physician's care for chronic neck, back and leg pains.

41. WHEREFORE, Plaintiffs request this Court to assess compensatory damages against each defendant, jointly and severally, in at least the following amounts, and which amounts will be proven in detail at trial of this action:

(a) Lost Earnings—$17 million;

(b) Decrease in value of stock and stock options —$5 million;

(c) Personal suffering, humiliation and emotional distress—$10 million; and

(d) An amount adequate to compensate Mr. Moore for defense costs incurred during the investigation and trial.

42. In order to deter defendants and others from engaging in such unlawful and unconstitutional activities, Plaintiffs further request punitive damages against each defendant, plus costs and attorneys' fees, and any other and further relief as the Court may deem just and equitable.

DEMAND FOR JURY TRIAL

43. Plaintiffs hereby demand a trial by jury of all issues so triable in this cause of action.

Respectfully submitted,

JONES, DAY, REAVIS & POGUE

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 92cv2288 (NHJ) (AK)
(consolidated with No. 93cv0324(NHJ)(AK))

WILLIAM G. MOORE, JR., PLAINTIFF

v.

JOSEPH B. VALDER, ET AL., DEFENDANTS

DEFENDANT POSTAL INSPECTORS' CONCISE STATEMENT OF MATERIAL FACTS NOT GENUINELY IN DISPUTE

Pursuant to District of Columbia Local Civil Rule ("LCvR") 7.1(h), the defendants Michael Hartman, Frank W. Korman, Pierce McIntosh, Robert Edwards and Norman Robbins submit in support of their Motion for Summary Judgment the following concise statement of material facts not genuinely in dispute:

1. The United State Postal Inspection Service investigated allegations of procurement fraud in connection with the Postal Service's acquisition of optical character reader equipment for use in processing mail. Hartman Declaration ("Decl."), Exhibit (Ex.) B ¶ 3: Korman Decl. (Ex. K) ¶ 3; Edwards Decl. (Ex. D) ¶ 12.

2. The investigation began in July, 1985 when Deputy Postmaster General Jackie Strange made to the Chief Inspector allegations about United States Postal Governor Peter E. Voss. Ex. D¶¶ 3, 7 - 8.

3. Strange told Chief Inspector Clauson that she thought Voss was showing an unusual degree of inter-

est in automation and OCR acquisition and seemed suspicious. *Id.* ¶ 7.

4. Chief Clauson told Inspector Robert Edwards, then working on an audit project regarding the OCR program, to keep a close watch on the procurement. *Id.*¶ 2.

5. The Inspection Service received in the Fall, 1985, an allegation from officials of AEG Telefunken that plaintiff Moore proposed splitting two pending OCR procurements. Ex. B ¶¶ 11-13, Ex. D, ¶¶ 9-10.

6. Moore was President, CEO and eventually Chairman of the Board of REI. Reedy was a Senior Vice President, who reported directly to Moore. Complt. ¶ 2; Ex. B ¶¶ 5-6 and Ex. 1 thereto.

7. Inspectors learned in their investigation that in 1984, the Postal Service elected to purchase "single line" OCRs and to wait until 1987 to decide whether to deploy "multi-line" OCRs. Ex. D ¶ 4.

8. Inspectors learned in their investigation that in mid-1985, Postmaster General ("PMG") Paul N. Carlin announced that the Postal Service would immediately take steps to move to a multiline OCR environment. Inspectors also learned that PMG Carlin also announced that the Postal Service would obtain multiline read capability through competitive procurements. Ex. D ¶ 6; Carlin Trial Testimony (Ex. F) at 2099, 2106-07.

9. Inspectors also learned that the Postal Service announced new procurements for both multiline OCRs ("Phase III" procurement) and for kits to retrofit newly-acquired single line OCRs (acquired in "Phase II). The latter procurement was the "Phase IIA" procurement. Ex. D, ¶ 6. Ex. F, ¶ 5. The total value of

the potential contracts was between $250 and $400 million. Ex. D, ¶ 17.

10. Inspectors learned that Electrocom Automation ("ECA") of Arlington. Texas had won the 1984 "Phase II" single line competition and that the ECA single line OCR employed technology licensed from AEG Telefunken, a West German company. Inspectors also learned that ECA had entered the Phase IIA retrofit competition along with the Phase III competition. Ex. D, ¶ 9.

11. Inspectors also learned that REI entered the Phase IIA and Phase III competitions. *Id.*

12. Inspectors learned that REI had competed in the Phase II single line procurement, but was not awarded a contract. *Id.*

13. Inspectors learned that REI required some technical information if it was to develop a kit to retrofit the ECA Phase II single line OCR. Ex. B, ¶ 10.

14. Inspectors learned that a meeting between REI and AEG was called in the Fall, 1985 with the topic being the technical information REI claimed to need. *Id.*

15. AEG officials subsequently alleged to the Inspection Service that at this meeting Moore proposed that the two companies split the pending procurements with ECA and Telefunken getting the contract to retrofit the single line machines and REI getting the contract to manufacture new multiline OCRs. The AEG officials also alleged to the Inspection Service that Moore also threatened to use his political clout to kill the retrofit program if AEG did not go along with his proposal. Ex. B, ¶¶ 11-13, Ex. D, ¶¶ 9-10.

16. Inspector Hartman and Inspector Robert Edwards interviewed the German businessmen as well as REI's Moore, Reedy and Bray. Ex. B, ¶¶ 11-13, Ex. D, ¶ 10.

17. After conducting their interviews, Hartman and Edwards met with Attorneys William Hardy and Allen Carver of the United States Department of Justice Criminal Division. Hardy was a the Supervisor of the Fraud Section, and Carver a Public Integrity Section supervisor. Ex. B. ¶¶ 14-20, Ex. D, ¶ 11.

18. In their meetings with prosecutors, Inspectors Hartman and Edwards shared Deputy Postmaster General Stange's allegations about Voss and the OCR program and AEG's contact splitting allegations against Moore. The prosecutors indicated that there did not at that point appear to be direct evidence of a federal crime, but advised that the Inspection Service should continue to investigate. *Id.*

19. Mr. Hardy told the Inspectors that in his opinion the possibility of payment of illegal gratuities would be a "forthcoming" line of inquiry and that they should research financial statements and other evidence for possible payment of illegal gratuities. *Id.*

20. Hardy and Carver also encouraged the inspectors to follow up on the possibility that Moore and REI had committed, or were committing crimes. They raised the possibility REI had made a false official statement, see 18 U.S.C. § 1001, and suggested investigating REI's intention and capability of actually competing on the Phase II conversion program. The prosecutors told Hartman and Edwards to be alert for a pattern of irregular, possibly unethical, behavior, that the should examine postal contracting regulations for

sole source procurement and their relevance to the multiline OCR procurement issue and that they should have further discussions with Strange regarding her original allegations. *Id.*

21. Edwards and Hartman subsequently sent a memorandum to Chief Clausen advising him of their discussions with Hardy and Carver and the prosecutors' advice to continue investigating the OCR matter and Voss' and REI's respective roles. They advised the Chief Inspector that "the approach we would be taking [to the investigation] points towards a conspiracy, mail fraud and ethics violations," and that an investigation of this sort would require full time attention. The Chief Inspector approved, and eventually a task force was established to look into the Postal Service's conduct of OCR procurement. Ex. B ¶ 20; Ex. D ¶ 12 and Ex. 1 thereto.

22. The memorandum in general terms outlined the nature and scope of the investigation that followed. Ex. B, ¶¶ 20-22, Ex. D, ¶ 12.

23. Inspectors subsequently learned that by claiming excessive amounts on his travel vouchers Voss defrauded the government of over $44,000. A grand jury investigation commenced and subpoenas turned up checks from John Gnau to Voss. Ex. D,¶¶ 15-16

24. Postal Inspectors learned in their investigation that John Gnau operated a consulting firm known as Gnau & Associates Incorporated ("GAI"). Ex. B ¶ 4; Ex. K ¶ 7.

25. Postal Inspectors learned in their investigation that Gnau paid kickbacks of money received from REI to U.S. Postal Governor Peter Voss. Ex. B ¶5; Ex. K ¶ 4. Inspectors also learned that William Spartin

bribed Voss with airline tickets and that Voss helped Spartin receive executive recruiting contracts from the Postal Service, including a contract to search for a new Postmaster General to replace Paul N. Carlin. Ex. B ¶¶ 37, 56.

26. Postal Inspectors learned in their investigation that on or around Labor Day, 1984, REI vice president Reedy dined with Governor Voss. Ex. B ¶ 29; Ex. K ¶ 7.

27. Postal Inspectors learned in their investigation that at the dinner referred to above, Voss recommended to Reedy that REI hire Gnau and his firm as consultants. *Id.*

28. Inspectors learned in their investigation that Reedy informed Moore of the dinner with Voss and Voss' recommendation of Gnau. Ex. B ¶ 29 & Ex. 4 thereto.

29. Postal Inspectors subsequently concluded that Gnau was paying kickbacks to Voss. Ex. B ¶ 24; Ex. K ¶ 4.

30. On or around April 8, 1986. Reedy was questioned by Postal Inspectors regarding the circumstances under which REI had come to hire Gnau. Reedy said that he learned of Gnau from Bob John Robison during an inadvertent meeting at the Republican National Convention in 1984. Ex. B ¶ 32.

31. Postal Inspectors learned in their investigation that soon after his April 8, 1986 meeting with Inspectors, Reedy called William Spartin. Spartin Statement (Ex. M) at 28.

32. Postal Inspectors learned in their investigation that Reedy did not actually obtain Gnau's name from Robison but rather from Peter Voss. Ex. B ¶ 32.

33. Postal Inspectors concluded that Reedy lied in his April 8, 1986 interview when he stated that he obtained Gnau's name from Voss. Ex. B ¶ 32; Ex. K ¶ 9.

34. Postal Inspectors learned in their investigation that Reedy did not immediately hire Gnau, and that Voss called Moore regarding Voss' recommendation of a consultant to Reedy. Ex. B ¶ 29 & Ex. 4 thereto.

35. Postal Inspectors learned in their investigation that Moore raised Voss' referral of Gnau with Reedy and told Reedy not to "drop the ball." Ex. B ¶ 30 & Ex. 5 thereto.

36. Inspectors' review of telephone records obtained in the investigation led them to observe at least 20 telephone calls between REI's offices and Governor Voss' office between July, 1984 and December, 1984. Ex. B ¶ 31.

37. When interviewed by Inspectors, Voss' administrative assistant, Sharon Peterson estimated that between September, 1984 and December, 1984, Voss made five to ten follow-up telephone calls relating to REI's hiring of GAI. Ex. B ¶ 30.

38. Inspectors obtained in the investigation notes by Moore that appeared to be dated December 18, 1984 and included the following: "Get John Knau [sic] involved have broad scale association with John—get together." Ex. B ¶ 19 & Ex. 4 thereto.

39. Inspectors learned in their investigation that in early 1985, REI retained the consulting firm Gnau & Associates, Incorporated ("GAI"). Ex. B ¶ 31.

40. In reviewing telephone records, Inspectors noticed that after early January, 1985, there were no indications of further calls between REI's offices and Voss' office. *Id.*

41. During the investigation, Inspectors obtained notes authored by Moore that appeared to reflect Postal Service Board of Governors discussions under what appeared to be a heading "Closed Session." Inspectors concluded that the information recited in notes described in the foregoing paragraph appeared to reflect information from a closed session of the United States Postal Service Board of Governors. Ex. K ¶ 11.

42. Inspectors obtained during the investigation notes authored by Moore notes dated April 29, 1985 containing the following entry: "Consultant—wired (Peter Voss)." Ex. B ¶ 34 & Ex. 6 thereto.

43. In their investigation, Inspectors learned that in 1985 REI was attempting to obtain from the Postal Service a sole source contract for production of OCRs. Ex. B ¶ 34: Ex. K ¶ 10.

44. Michael Marcus told inspectors that Voss attempted to undermine PMG Carlin's decision to acquire multiline OCR technology by competitive procurement and that Voss pressed for the immediate acquisition of multi-line OCRs from REI. Inspectors also learned that around the same time Moore and REI mounted an intense media and lobbying campaign to reverse the Postal Service's OCR strategy and obtain a sole source contract. Ex. B. ¶ 8; Ex. D ¶ 7; Ex. E ¶¶ 5, 10; Ex. J at 14; Complt.,¶ 10.

45. Michael Marcus of GAI told Inspectors that during a meeting with Gnau and Moore and Reedy, either

Moore or Reedy remarked "[w]hy don't you get Peter Voss to order sole source.'" Ex. B ¶ 34; Ex. J at 15.

46. Marcus also told Inspectors that he received information from Voss and passed it on to REI's Reedy and Frank Bray and he would write, with assistance from Reedy and Bray, documents on OCR-related topics. Ex. J at 13-14.

47. Marcus also told Inspectors that the documents he authored were favorable to REI and that Voss passed Marcus' work product within the Postal Service as Voss' own work product. *Id.* at 14.

48. John Gnau told Postal Inspectors of a conversation in which Reedy asked him "what's your arrangement with Peter Voss" to which Gnau replied "[i]t's better you not know." Gnau also told Inspectors that on October 12, 1984, he met Reedy at the Admirals Club in the Dallas-Fort Worth airport. Gnau told Inspectors that Reedy said "Peter Voss said you can do great things. Peter and Bill have a friendship and we need help in getting a Postal Service contract." Gnau at 8. Gnau told Inspectors that he suggested to Reedy that they refer to Voss as "our friend" and Reedy said "I understand." Gnau Statement (Ex. O) at 8-9, 12. Gnau told Inspectors that on another occasion when discussing REI payments to Gnau's firm, Reedy said to Gnau "I know you have people to take care of." Gnau told the grand jury that he understood Reedy to refer to Voss. Ex. Q at 10-13.

49. REI employee Frank Bray told Inspectors that Moore devised a marketing strategy that was designed to allow REI to characterize the award of the Phase IIA contract to retrofit single line OCRs as a de facto sole source award and help create a climate favorable to

an immediate sole source award to REI for new multi-line machines. Bray Grand Jury Transcript (Ex. L) at 71.

50. Bray also told Inspectors that REI requested more technical information from AEG than REI needed to develop a retrofit kit for the Phase I single line OCRs. Ex. B ¶ 23.

51. Bray's information led the Inspection Service to doubt that REI had competed in the Phase IIA procurement in good faith.

52. When interviewed by Postal Inspectors on July 25, 1986, Moore stated that he was uncertain what role William Spartin was playing in GAI's efforts in representing REI to the Postal Service. Moore stated "[w]e kind of ignored him." Ex. B ¶ 41 & Exhibit 5 thereto at 11.

53. During their investigation, Postal Inspectors obtained a memorandum from Reedy to Moore dated April 8, 1985·

> Five weeks have elapsed since we presented "in camera" for the USPS Board of Governors in early March. Things continue to look as though we could get a significant order relatively soon. I don't have to tell you how fragile the situation is. I think you got some sense of this from talking to Spartin; however, I think the basic tactics are correct, the economics are on our side and we have chosen well, so let's see where it goes.

Ex. B ¶ 44 & Ex. 10 thereto; Ex. K ¶ 12.

54. Postal Insepctors learned during their investigation that William Spartin was the president of MSL International, an executive recruiting firm, and that in

late 1985 Spartin was given a contract to search for a candidate to replace Paul N. Carlin as Postmaster General of the United States. Inspectors also learned that Spartin was the president of GAI. Ex. B ¶¶ 4, 37-38; Ex. K ¶ 12.

55. Postal Inspectors learned in their investigation that Spartin called Moore and requested that Moore provide him names of candidates for the office of Postmaster General. Ex. B ¶¶ 39-41 & Ex. 5 thereto at 13-14.

56. Postal Inspectors learned in their investigation that Moore provided Spartin with three names, including Albert V. Casey. Ex. B ¶ 41 & Ex. 5 thereto at 14.

57. Postal Inspectors learned in their investigation that Moore also agreed to call Casey and see if Casey would take a call from Spartin and that Moore did call Casey. Ex. B ¶ 41 & Ex. 5 thereto at 14. Carlin's replacement by Dallas businessman Albert V. Casey caused speculation in the media and concern in Congress of corruption relating to REI's efforts to obtain an OCR contract. Ex. B ¶ 36 and exhibits 8 and 9 thereto.

58. Moore told Inspectors that he did not at first believe that Spartin was recruiting for a new postmaster general to replace Carlin. Ex. B ¶ 41 & Ex. 5 thereto at 13. Moore's explanations regarding the nature and extent of his contact with Spartin caused Inspectors to question Moore's candor. Ex. B ¶¶ 40-44; Ex. K ¶ 12.

59. William Spartin told Postal Inspectors that he and Moore agreed to say that Moore had called Spartin recommending candidates for Postmaster General. Ex. B ¶ 40.

60. Gnau told Postal Inspectors that about the time he received a grand jury subpoena, he received a phone call from Reedy. Gnua told Inspectors that he wanted to get together to discuss a couple of issues. Gnau told Inspectors that the meeting occurred at the Maison Blanche Restaurant in Washington, D.C. with Moore and Reedy and that the following was discussed: Gnau told Inspectors that Moore and Reedy said "[o]ur attorneys are nervous about this meeting, but we aren't trying to do anything wrong." Moore said he was nervous about Spartin's attempted cover up. Moore and Reedy wanted to know about the involvement of Gnau and Voss in any illegal activity that they should know about. Gnau told Inspectors that he responded "[i]t's better you not know." Ex. O at 21. Gnau also told Inspectors of a conversation with Moore in late May, 1986 on the White House lawn in which Moore stated that he was uncomfortable with the cover-up Moore and Spartin had agreed upon.

61. Michael Marcus told Inspectors that on March 28, 1986, Marcus was contacted by William Spartin. Marcus told Inspectors that Spartin said he (Spartin) had a meeting scheduled with Postal Inspectors. Marcus also told Inspectors that Spartin said that a full scale investigation was under way and described Marcus as the "loose cannon on deck." Marcus told Inspectors that Spartin also stated that Moore, Reedy, Gnau and Voss had already met and developed a story to cover up their involvement. Marcus told Inspectors that Moore, Reedy, Gnau and Voss had purged their files and that Spartin urged Marcus to meet with Gnau to develop their story. Ex. B ¶ 40; Ex. K ¶ 13; Ex. J at 22.

62. REI was not able to locate the following records: Moore's telephone log for the period October 19, 1984 to

January 15, 1985 (identified as Log No. 4); Telephone toll records for Moore for January, February, April, November and December 1984 and January 3 and 4, 1985; Reedy's telephone toll records for January-February, April-May and December, 1984 and January, March and April, 1985. Carol S. Lyons Grand Jury Transcript (Ex. Q) at 19-25: Ex. K ¶ 13; Ex. B ¶ 46.

63. REI turned over to the grand jury Moore's "Postal" Notebook. On its cover is the following: "80 Sheets 11˝ x 8 1/2˝ College Ruled." Inspectors reviewed the notebook and found it contained 44 sheets. Ex. B ¶ 47 and Ex. 1 thereto (Moore's "Postal" Notebook); Ex. K ¶ 13 Inspectors also found that it contained no dates for entries between January 6, 1986 and June 24, 1986. Ex. B ¶ 47.

64. Inspectors reviewed another of Moore's Moore's notebooks and found it contained an entry for January 27, 1987 as follows:

> "A lot of homework; drive a wedge between people"
>
> "(intimidate)",
>
> "Answer I don't know, I really can't remember",
>
> "Excitable".
>
> "All kinds of scenarios",
>
> "Ask same questions over and over",
>
> "Don't relax", "Long interrogation, tough questions at end)",
>
> "Possible subpoena".

Ex. B ¶ 48 & Ex. 11 thereto; Ex. K ¶ 14.

65. REI employees subsequently testified to the grand jury that Moore made comments to this effect in a staff meeting that day. Ex. B ¶ 49; Ex. K ¶ 14.

66. Prior to January 27, 1987, Inspector Hartman had made arrangements with REI's general counsel for Inspectors to interview REI employees in the week following January 27, 1987. *Id.*

67. REI competed in 1987 in a test of potential vendors' multiline OCR machines. Unisys Corporation teamed with REI after REI's October 1988 indictment submitted REI's machine and test results in an unsuccessful bid for a multiline OCR procurement contract. *Unisys Corp. v. United States Postal Service*, Civ. No. 89-331 LON (D. Del. 1989), Ex. S.

68. In rejecting Unisys' challenge to the contract award to ECA, the United States District Court for the District of Delaware concluded, among other things, that "[s]ince the REI machine performed so poorly in relation to the ECA machine in terms of total life cycle cost analysis, the record indicates that Unisys would have had to lower its original bid from $233.6 million to $3,805,585 in order to win the contract." *Id.* at 22.

69. Inspector Norman Robbins only role in respect of the investigation at issue in this case was to administer a polygraph examination to William Spartin. Robbins Decl. (Ex. X).

70. Inspector Robert Edwards worked on the investigation from mid-1985 to January 1987, and did not participate in any recommendation to prosecute Moore, Reedy or REI. Ex. D ¶¶ 3, 20.

71. Inspector Pierce McIntosh worked on the investigation from November 1985 to August 1987 and

did not participate in any recommendation to prosecute Moore, Reedy or REI. McIntosh Decl. (Ex. Y) ¶¶ 2-3.

72. Inspector Michael Hartman worked on the investigation from November, 1985 through the trial of Moore, Reedy and REI. Inspector Hartman had no personal or professional stake in what kind of OCRs the Postal Service purchased, who they purchased them from, or how any procurement of OCRs might be structured. Ex. B ¶¶ 3,7.

73. Inspector Frank W. Kormann worked on the investigation from December 1985 through the trial of Moore, Reedy and REI. Inspector Kormann had no personal or professional stake in what kind of OCRs the Postal Service purchased, who they purchased them from, or how any procurement of OCRs might be structured. Ex. K ¶¶ 3,5.

74. No one instructed or suggested to the Inspectors working on the investigation that Moore be prosecuted to retaliate for his criticism of the Postal Service. Ex. B ¶ 7; Ex. K ¶ 5; Ex. Y ¶ 10; Ex. D ¶ 13.

75. AUSA Joseph B. Valder made the decision to use summaries of witness statements before the Grand jury. AUSA Valder had used this procedure in past cases. Valder Decl. (Ex. C) ¶ 10.

76. Inspectors working on the investigation drafted the summaries based on their interviews with the witness. The draft was reviewed for accuracy with the witness and his or her attorney prior to presentation to the grand jury. *Id.*

77. Before the grand jury, the summary statement was used as follows: the witness whose testimony was presented in this manner was summoned before the grand jury; was present during the reading of the

summary to the grand jury; was asked read along; and was asked to vouch both that the summary was read correctly and that it was true and accurate. Mr.Valder asked any questions he had, and the grand jurors asked their questions. *Id.*

78. AUSA Valder provided excerpts of summary statements of certain witnesses and other material to Brian Gettings, an attorney representing William Spartin. Ex. C ¶ 13; Ex. B ¶ 64.

79. AUSA Valder provided the materials referred to in the foregoing paragraph at Mr. Gettings' request. Ex. C ¶ 13; Ex. B ¶ 64.

80. Mr. Gettings informed Mr. Valder that he needed the materials referred to above for the purpose of refreshing Mr. Spartin's recollection and assisting Mr. Spartin in fulfilling Mr. Spartin's obligations under his non-prosecution agreement with the United States. Ex. C ¶ 13; Ex. K ¶ 19.

81. AUSA Valder determined what materials would be provided to Mr. Gettings. Ex. C ¶ 13.

82. Postal Inspectors working on the OCR procurement investigation did not provide the excerpts of summary statements or other materials referred to in the foregoing paragraph to Mr. Gettings, or to Mr. Spartin. Ex. C ¶ 13; Ex. B ¶ 19.

83. Postal Inspectors working on the OCR procurement investigation did not provide transcripts of grand jury testimony to Mr. Gettings or to Mr. Spartin. Ex. C ¶ 13; Ex. B ¶ 19.

84. The meeting at which a copy of William Spartin's non-prosecution agreement was torn in half occurred in the United States Attorney's Office on October 24,

1986. Mr. Spartin was accompanied by his attorney, Brian Gettings.

85. The Postal Inspection Service administered a polygraph examination to William Spartin, which occurred on December 5, 1986. Ex. X ¶ 4.

86. The conclusion of the polygraph examination was that Spartin indicated no deception on the question of whether he told, or was present when anyone else told anyone at REI of the Voss payoffs. *Id.* ¶¶ 6, 8.

87. Inspectors Hartman and Kormann did not give former Postmaster General Paul Carlin a copy of a draft indictment to review. In late September, 1988, AUSA Valder asked Inspectors Hartman and Kormann to verify certain facts in a draft indictment that had been prepared. The Inspectors interviewed Mr. Carlin at his home on September 20, 1988. They had a copy of the draft indictment provided by Mr. Valder. They did not show it to Mr. Carlin. They did not identify the document to Mr. Carlin and they did not tell Mr. Carlin that it was a draft indictment. They did not tell Mr. Carlin that any indictment was being considered. The Inspectors interviewed Carlin, verified the accuracy of the factual matters in question and, departed. Ex. B ¶ 67; Ex. K ¶ 22.

87. In December, 1987, Inspector McIntosh received a phone call from former Postmaster General Carlin inquiring about the results of Inspectors' inquiry relating to a memorandum and a copy thereof authored by Deputy Postmaster General Strange. Ex. Y ¶ 8.

88. Carlin had been interviewed in this inquiry as had Ms. Strange, Albert Casey and John McKean. An Inspection Service laboratory analysis also was ob-

tained in an effort to determine if the memorandum and copy thereof were prepared contemporaneously. *Id.*

89. Inspector McIntosh informed Carlin of the Inspection Service's conclusion that there was no evidence that the memorandum and copy had not been prepared contemporaneously. *Id.* ¶¶ 8-9.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civ. No. 92-2288 (NHJ)(AK)
[consolidated with Civ. No. 93-0324 (NHJ) (AK)]

WILLIAM G. MOORE, JR., ET AL., PLAINTIFFS

v.

JOSEPH B. VALDER, ET AL., DEFENDANTS

DECLARATION OF MICHAEL HARTMAN

Pursuant to 28 U.S.C. § 1746, I Michael Hartman hereby make the following unsworn declaration in support of the United States Postal Inspector Defendants' Motion for Summary Judgment.

1. I have personal knowledge of the following facts and if called as a witness could competently testify thereto.

2. I am employed by the United States Postal Inspection Service as a Postal Inspector. I have been continuously so employed since February, 1979. The Postal Inspection Service is responsible for safeguarding the integrity of the United States mails and the integrity of United States Postal Service systems, operations and property.

3. In November, 1985, I was assigned to an investigation relating to alleged irregularities with the Postal Service's efforts to procure automated mail processing equipment, in particular optical character reader (OCR) equipment.

4. The investigation into irregularities in OCR procurement led to guilty pleas and convictions of several persons. Most prominent among those to plead guilty was United States Postal Governor Peter E. Voss. In addition to Governor Voss, John Gnau and Michael Marcus also pled guilty to federal crimes. Mr. Gnau and Mr. Marcus were employed as consultants by Recognition Equipment, Incorporated ("REI") in an effort to obtain contracts for the production of multiline optical character reader ("OCR") machines. Depending upon how the Postal Service might structure its procurement, the contracts that REI sought were worth between $250,000,000 to $400,000,000. In addition to Mr. Gnau and Mr. Marcus, William Spartin was the president of Mr. Gnau's consulting firm, Gnau and Associates, Incorporated, "GAI". In April, 1986, Mr. Spartin entered into a non-prosecution agreement with the United States Attorney in which he agreed to provide truthful and complete information and testimony for the government.

5. Our investigation revealed that Mr. Gnau paid Mr. Voss kickbacks in exchange for Mr. Voss' efforts to help win OCR production contracts for REI. We learned that in addition to advocating actions that would aid REI, Governor Voss applied pressure to Postal Service management in effort to have them take steps favorable to REI. Voss also leaked internal confidential Postal Service information to GAI's Michael Marcus. Marcus told us that he used this information to provide memoranda, position papers and other written materials for Voss to use within the Postal Service to build support for actions favorable to REI. Marcus told us that on several occasions, Voss passed Marcus' work off within the Postal Service as Voss' own work pro-

duct. Marcus also told us that REI vice president Robert Reedy and REI employee Frank Bray helped prepare some of these memoranda and position papers using internal and confidential Postal Service information leaked by Voss. Marcus also told us that he provided information leaked by Voss to REI. A review of Moore's Postal Notebook showed what appeared to be his notes regarding a closed meeting of the Board of Governors. A true and complete copy of Moore's Postal Notebook as received by us during the investigation is attached hereto as Exhibit 1.

6. As the result of our further investigation of these contents, I concluded, as did other Postal Inspectors who participated in the investigation, that Moore and REI vice president Robert Reedy knew about the Voss-Gnau kickback scheme and also participated in a scheme to corruptly influence Postal Service personnel decisions. Because Moore, Reedy and REI came to know of the scheme and continued to use the Gnau firm with such knowledge, I concluded that they joined in a conspiracy to defraud the United States.

7. The actions I took in relation to the investigation of the OCR procurement were taken solely in an effort to uncover the full extent of the criminal conspiracy and to bring to justice those, including Moore, Reedy and REI, whom I and other Inspectors believed knowingly participated in the conspiracy. At no time did I take any action for the purpose of punishing or retaliating against Moore, Reedy or REI for any criticism of Postal Service procurement decisions. At no time did anyone, from the Inspection Service or anywhere else in the Postal Service, suggest to me that Mr. Moore should be prosecuted for his criticism of the Postal Service. I had no personal or professional stake in what kind of OCRs

the Postal Service purchased, who they purchased them from, or how any procurement of OCRs might be structured. I was interested in OCR procurement only to understand how the conspiracy we uncovered operated and how it might have corrupted the decision making process. Everything I did in relation to Mr. Moore and his company I did based on my understanding and analysis of the evidence we obtained and in a good faith effort to uncover the full extent of the criminal activity.

8. As the result of my work on the investigation, I learned that in July 1985, Deputy Postmaster General Jackie A. Strange approached the Chief Postal Inspector and alleged that she believed that Governor Peter E. Voss was acting improperly with respect to the Postal Service's procurement of OCR equipment. I learned that Ms. Strange had told the Chief Inspector of her belief that Governor Voss was exerting unusual and unwarranted pressure on her and other Postal Service officials with respect to OCR procurement. I also learned that Ms. Strange told the Chief Inspector that, although she had no proof, she tended to suspect that Voss had some personal interest in the OCR procurement. I understood these facts to be a basis on which the Inspection Service had first come to focus on OCR procurement as a potential subject for criminal investigation.

9. Sometime in the Fall, 1985, I became aware of an allegation of attempted contract splitting made against REI president William G. Moore, Jr. I also learned that the Postal Service had decided in approximately July, 1985 to acquire multi-line OCR machines as part of its program to automate mail sorting. I learned that prior to deciding to acquire multi-line OCR machines, the Postal Service had procured, and was taking steps to

deploy, single-line OCR machines (in a procurement referred to as "Phase II"). I also learned that as a result of a management decision referred to as the "mid-course correction" Phase II machines were to be retrofitted to multiline capability (a procurement referred to as "Phase IIA"). I also learned that the Postal Service was undertaking a procurement for original equipment multiline systems, a procurement referred to as "Phase III."

10. The contract splitting allegation against Moore related to the procurement of Phase IIA retrofit kits for the single line OCR machines. I learned that the single line machines that were to be retrofitted were sold by Electrocom Automation ("ECA") of Arlington, Texas and employed technology licenced to ECA by AEG Telefunken, a West German concern. I also learned that both ECA and Recognition Equipment, Incorporated were competing to retrofit the ECA single line machine to multiline capability. I learned that a dispute had arisen between AEG and REI regarding the sharing of technical information that REI claimed to need in order to retrofit the ECA single line machine to multiline capability. I further learned that on October 17, 1985, representatives of AEG and REI had met to discuss the dispute and that the contract splitting allegation had arisen from this meeting.

11. When interviewed by Inspector Robert Edwards and me on November 7, 1985 about the contract splitting allegations, Dr. E. Leopold Dieck of Telefunken said that during the October 17, 1985 REI-AEG meeting, Moore made various statements that Dieck said clearly indicated to him Moore's desire that AEG and REI split the multiline OCR procurement so that ECA (AEG's licensee) would receive the Phase IIA

contract to retrofit the ECA single line machine and REI would receive a contract to produce new original equipment multiline machines in the "Phase III" procurement. Dr. Diech also said that Moore referred to his (Moore's) political influence and that he could get the retrofit procurement killed if AEG did not go along. Dr. Diech also stated that Moore said that "he [Moore] spent $70 million on the USPS and never got a contract, but I'll be damned of I don't get this one." Dr. Diech said that he was sufficiently upset by Moore's comments that he reported them to the West German embassy.

12. On November 6 , 1985, Inspector Edwards and I also interviewed Dr. Kurt Scheidhauer of AEG regarding the contract splitting allegation against Moore and REI and the October 17, 1985 meeting between Diech and Scheidhauer of AEG and Moore, Reedy and Bray of REI. Dr. Scheidhauer was interviewed in part because of an exchange of correspondence between REI and AEG. AEG alleged in this correspondence that it was willing to provide the technical support REI needed, but that REI was not really interested in competing on the conversion program, and was attempting to discredit the Postal Service's intention of creating a competitive environment for both its Phase IIA and Phase III multiline programs. Scheidhauer's letter on behalf of AEG further stated that AEG's impressions were "straightened by Mr. Moore's ideas about splitting the multi line procurement between Electrocom (for the Conversion Program) and REI (for the Phase III Program)." Dr. Scheidhauer gave an account of the AEG-REI meeting similar to that provided by Dr. Diech.

13. On November 20 1985, Inspector Robert Edwards and I also interviewed REI's Moore, Reedy and

Bray regarding AEG's contract splitting allegation. Moore denied the allegation and stated in essence that he was merely relating to the AEG officials what he (Moore) would do about OCR procurement if he were postmaster general. Moore indicated that he made his comments in response to a question from the AEG officials. Near the end of the interview, I asked Moore, Reedy and Bray if any of them had met or spoken, individually with a member of the Board of Governors. At the time, I asked this question because of the allegations that had been made by Deputy Postmaster General Strange with respect to Mr. Voss' behavior. We did not know at that time that Voss was accepting kickbacks from REI's consultant working on the OCR procurement. Reedy answered my question by saying no. Moore and Bray non-verbally indicated agreement with Reedy's response.

14. After conducting our interviews regarding the contract splitting allegation, Inspector Edwards and I had meetings in November, 1985 with Attorneys William Hardy and Allen Carver of the United States Department of Justice ("DOJ") Criminal Division. At that time, Mr. Hardy was the supervisor of the Fraud Section. Mr. Carver was a supervisor in the Public Integrity Section. Mr. Hardy met with us for over two hours. In our meetings, we shared with Mr. Hardy and Mr. Carver Deputy Postmaster General Strange's allegation about Voss and the MLOCR program. Both Mr. Hardy and Mr. Carver were positive and supportive regarding our investigative efforts. Neither Mr. Hardy nor Mr. Carver felt that there was direct evidence of a federal crime, but both advised us to continue our inquiry and low key gathering of information.

15. In our meeting, Mr. Hardy stated that in his opinion the possibility of payment of illegal gratuities would be a "forthcoming" line of inquiry and he advised that we should research financial statements and other evidence for possible payment of illegal gratuities. Mr. Carver advised that we should obtain and review financial statements and other data from the Office of Government Ethics or other appropriate source.

16. Mr. Hardy and Mr. Carver also advised that we should investigate the possibility of a false official statement in violation of 18 U.S.C. § 1001 by investigating REI's intention and capability of actually competing on the Phase IIA conversion program.

17. Mr. Hardy and Mr. Carver also advised that we should review and analyze comments, meetings, testimony, transcripts and other information to detect and establish a pattern of irregular, possibly unethical behavior and possible perjury regarding an Executive Order potentially relevant to the inquiry.

18. Mr. Hardy and Mr. Carver also advised us to examine postal contracting regulations for sole source procurement and their relevance to the multiline OCR procurement issue.

19. Mr. Hardy also advised us, in light of Jackie Strange's later comments retracting her allegations of possible personal interest on Voss' part, to have another discussion with her regarding the events prior to her testimony before any grand jury.

20. Immediately following our meeting with Mr. Hardy and Mr. Carver, Inspector Edwards drafted and we both reviewed and signed, a memorandum to the Chief Inspector advising him of our discussions with DOJ's Fraud and Public Integrity Sections and the

advice they had given us. Based on our discussions with Mr. Hardy and Mr. Carver, we advised the Chief Inspector that "the approach we would be taking [to the investigation] points toward a conspiracy, mail fraud and ethics violations." We advised the Chief Inspector that based on our discussions with Hardy and Carver we should try to develop further evidence and that the matter appeared to require our full time attention. We also outlined other investigative steps to pursue. I have reviewed a copy of the memorandum we prepared for the Chief Inspector, and it truthfully and accurately reports our conversations with Mr. Hardy and Mr. Carver.

21. In our memorandum to the Chief Inspector, Inspector Edwards and I also outlined steps that we believed collectively would allow us to develop any potential case. Those steps included: going to Chicago to review Phase II OCR acceptance tests and to view the REI OCR machine then operating in the Chicago Post Office; creating a complete chronological document file on the OCR issue; creating a complete subject file on the OCR issue, including Congressional testimony, REI correspondence and other potentially relevant documents; and preparing a narrative brief of the salient points. Our interest in these matters at this early stage and throughout our investigation related solely to the need to investigate possible corruption in the Postal Service's procurement process and to ascertain the motives of those involved in the procurement issues under investigation. Our purpose was not to retaliate for anyone's First Amendment-protected activity

22. Inspector Edwards' and my meeting with Mr. Hardy and Mr. Carver occurred soon after I had been

assigned to the investigation. The plan of action we developed in light of Mr. Hardy's and Mr. Carver's comments set in a very broad way the direction of our investigation. Consistent with Mr. Hardy's and Mr. Carver's suggestions, we looked for the possibility that someone at the Postal Service was being paid illegal gratuities. Also consistent with Mr. Hardy's and Mr. Carver's suggestions, we considered the possibility that REI was not competing in good faith in the Phase IIA OCR conversion procurement and might be illegally trying to undermine that procurement. That is why we began to investigate Moore and REI. We did not begin to investigate Moore and REI out of any hostility to Moore's public speech. By the time I became involved in the investigation the issue of whether to procure single line or multiline OCR equipment had been settled by Postmaster General Carlin in favor of multiline acquisition. My sole concern was to determine the full extent to which the decision making process had been corrupted.

23. Mr. Hardy's prediction that gratuities would be "'forthcoming" was correct. We eventually learned that Governor Voss was accepting illegal gratuities from John Gnau of Gnau and Associates, Incorporated ("GAI"), a consulting firm hired by REI to lobby the Postal Service in an effort to sell the REI multiline OCR machine. We also learned that GAI president William Spartin was bribing Governor Voss with airline tickets. In exchange for Voss' ordering and billing of travel tickets to an account Spartin controlled, Voss helped steer Postal Service executive recruiting contracts to Spartin's executive recruiting firm MSL International. We also learned from REI employee Frank Bray that REI President William Moore had devised a

"marketing strategy" that was designed to undercut the competitive procurement of retrofit kits ("Phase IIA") and create a political climate conducive to REI's receiving a sole source contract for a complement of original equipment multiline OCR machines. In particular, Mr. Bray acknowledged that, at Mr. Moore's direction, REI had demanded more in the way of technical information from AEG than REI needed for the purpose of developing a retrofit kit. In my view, this later confirmation by Bray (who cooperated under an immunity agreement) tended to support the original AEG allegation against Moore. In light of our original conversations with Mr. Hardy and Mr. Carver, these developments, along with other evidence uncovered in the investigation, contributed to my overall sense that our investigation was necessary, justified, and on the right track.

24. We learned that Gnau paid Voss a kickback of money Gnau received from REI under his consulting contract with REI. In addition, Gnau, Voss, Marcus and Spartin agreed to split the proceeds of the one percent contingent fee REI had agreed to pay GAI in the event REI won an OCR production contract. We learned that the total value of potential OCR production contracts was between $250 and $400 million, meaning that Gnau, Voss, Spartin and Marcus would split somewhere between $2.5 and $4 million. As a result of the investigation, Voss pled guilty to federal crimes on May 30, 1986.

25. Although our successful apprehension of Voss, Gnau and Marcus was a major accomplishment for the Inspection Service and those of us who worked on the investigation, it was necessary for us to continue the investigation in order to determine who else, both in

the Postal Service and outside, might have been involved in the scheme by which the Postal Service's decision making regarding automation and OCR procurement had been corrupted. Eventually, we concluded that Moore, Reedy and REI acquired sufficient knowledge of their consultants' actions as to be culpable as members of the conspiracy.

26. The investigation that began in mid-1985 and culminated in the indictment of Moore, Reedy and REI in October, 1988 involved hundreds of interviews, thousands of documents and the sifting and analysis of a huge amount of evidence. It is not possible in this context to outline all of the evidence that I felt supported our conclusion that Moore, Reedy and REI knowingly participated in the conspiracy to defraud. I will describe briefly some of the most significant evidence that led me to believe that Moore, Reedy and REI knowingly participated in the conspiracy that we had uncovered.

27. We learned in our investigation that REI had competed in the earlier Phase II single line OCR procurement, but lost to Electrocom. We learned that the Postal Service had announced Electrocom as the winner of the Phase II procurement in July, 1984. We also learned that because the Postal Service planned to procure single line OCRs (designed to read the last line of an address) in Phase II and to encourage large volume mailers to affix the nine digit zip code to individual mail pieces, the Postal Service planned not to revisit the question of whether to procure multiline OCRs (designed to read all three lines of an address), until 1987. Therefore, it appeared that REI had no immediate prospects of receiving significant Postal Service business. According to Moore's notes, REI

planned in light of its failure to secure the Phase II contract, be getting out of the postal business. A true copy of Moore's notes received by us in the Investigation is attached hereto as Exhibit 2.

28. We learned that Governor Voss appeared to encourage Moore and REI about the prospects of USPS business. We learned from Voss' administrative assistant, Sharon Peterson, of a phone conversation in which Moore and Voss discussed Postal procurement. Ms. Peterson identified on a letter written by Moore her notes of the conversation between Moore and Voss which reflected statements such as "Making sure each governor has the letter in their hands;" "Already made moves to slow down;" "making point;" "taking heat;" "working for you." A true copy of Moore's letter to Voss bearing these notations and received by us in the investigation is attached hereto as Exhibit 3.

29. We also learned that on or around Labor Day, 1984, REI vice president Robert Reedy dined with Voss. During the dinner, Voss recommended that REI (who then was represented in Washington, D.C. by the well known consulting firm Hill & Knowlton) hire a new consultant, John Gnau of West Bloomfield Hills, Michigan. We learned that Voss followed up this recommendation with several phone calls urging that REI hire Gnau and GAI. Moore's notes, apparently of a telephone conversation with Voss on December 18, 1984, reflected the following: "Get John Knau [sic] involved have broad scale association with John—get together." A true copy of Moore's notes containing this entry and received by us in the investigation is attached hereto as Exhibit 4.

30. Ms. Peterson estimated that between September, 1984 and December, 1984, Voss made five to ten

follow-up telephone calls relating to REI's hiring of GAI. I thought that Voss displayed an unusual level of interest for a Governor to take in whether a potential vendor hires a particular consultant. I also felt that it should have at least raised suspicion on the part of Moore, Reedy and REI as to Voss' motives in recommending Gnau. We also learned that when Reedy did not immediately act on Voss' recommendation of Gnau, Voss called Moore and told him that he had put Reedy in touch with a consultant but that nothing had happened. Moore acknowledged in an interview with Inspectors that he then raised the issue with Reedy and told him not to "drop the ball." A true copy of our Memorandum of Interview of Mr. Moore and accurately reflecting his statements during the interview is attached as Exhibit 5 hereto.

31. I also noticed when analyzing telephone activity among subjects of the investigation, at least 20 telephone calls between REI and Governor Voss' office between July, 1984 and December, 1984. After REI retained Gnau and GAI in early 1985, however, there was no evidence of further telephone contact between Governor Voss and anyone at REI. There were, however, virtually hundreds of calls between Reedy and the three main players in the GAI consulting firm, Gnau, Marcus and Spartin. That the telephone contact between REI and Voss suddenly ended right around the time REI acted on Voss' recommendation to hire GAI appeared to me to be strange and not a coincidence. If Moore, Reedy and REI viewed Voss as an "independent" Board of Governors ally on the OCR question, as Moore, Reedy, and REI later would claim, it made no sense that REI, Moore or Reedy never again made direct contact with that "independent" ally. The

evidence regarding telephone activity, along with other evidence, led me to conclude that Moore, Reedy and REI became aware that once they had hired Gnau and GAI such direct contact with Voss no longer was necessary or advisable.

32. Other evidence also led us to believe that Moore, Reedy and REI understood their new consultants' true relationship with Voss. I learned that in an interview on April 8, 1986, Reedy lied to Inspector Edwards about Voss' referring him to Gnau. Reedy falsely told Inspector Edwards that he was introduced to Gnau at the 1984 Republican National Convention by Bob John Robison of Hill & Knowlton. In fact, Reedy obtained Gnau's name from Voss during their Labor Day, 1984 dinner. Reedy was forced to admit in a second interview, conducted on July, 25, 1986, that he lied to Inspector Edwards during the April 8, 1986 interview. Because in April, 1986 the Inspection Service was still investigating Voss' illegal activities, it would have been very helpful to have a truthful account from Mr. Reedy of how REI came to hire Gnau. In my experience as a fraud investigator, the reason people lie about key events in a transaction under investigation is that they have done something wrong and fear being caught. I could think of no other logical explanation why Reedy would lie to us about such an important fact. Reedy's lie was in my mind a significant fact indicating knowledge of the illegal action of Voss, Gnau, Marcus, and Spartin on REI's behalf.

33. When we learned that Reedy had lied to us about Voss' referral of Gnau, I concluded that Reedy also probably lied to Inspector Edwards and me when in our November, 20, 1985 interview of Moore, Reedy and Bray, I asked if any of the three had met with or

spoken individually with a member of the Board of Governors and all three had indicated not. I also came to believe that Moore and Reedy were less than candid with us by not volunteering their extensive telephone contact with Governor Voss in 1984 and the level of interest Governor Voss showed in whether REI acted on his suggestion of hiring Gnau, I also concluded that Frank Bray was less than candid when he was interviewed in April, 1986. In response to the question of how REI came to hire Gnau, Bray answered in essence "through Reedy." Bray later acknowledged to us that Reedy had told him about Reedy's Labor Day, 1984 dinner with Voss and that Reedy did so prior to the beginning of our investigation. Bray also acknowledged that he had altered his travel records to disguise his contacts with William Spartin. Although Bray stated that he subsequently changed his records again to make them accurate, Bray's actions were another factor that made me doubt the honesty and integrity of REI management in its dealings with the Postal Service and with our investigation.

34. Other evidence indicated that Moore, Reedy and REI understood the illegal nature of Voss and Gnau's relationship regarding OCR procurement. GAI's Michael Marcus told us that on one occasion either Moore or Reedy remarked to Gnau and Marcus "[w]hy don't you get Peter Voss to order sole source?" Moore's notes contained an entry, dated April 29, 1985, that read: "'Consultant—wired (Peter Voss)." A true copy of Moore's April 29, 1985 notes are attached as Exhibit 6. Gnau reported to us conversations with Reedy in which Reedy asked in substance "what is your arrangement with Voss" and Gnau replied that "it was better" that Reedy not know. I viewed both Reedy's question,

including its premise that there was "an arrangement" between Gnau and Voss and Gnau's answer as yet further proof that combined with all the other evidence indicated that Moore, Reedy and REI knew of the kickback arrangement. Gnau stated that on another occasion (in August, 1985) he negotiated a public relations contract with REI. In the course of the discussions over how much REI would pay GAI, Reedy said to Gnau in substance "I know you have people to take care of." Gnau stated to us that it was his impression that Reedy was referring to Voss. Gnau also told us that he instructed Reedy not to refer to Voss by name and instead to refer to Voss simply as "our friend" to which Reedy responded, according to Gnau, "I understand." Gnau also related to us that prior to a meeting with Postal Governors, including Voss, Gnau had informed Reedy that the other Governors did not need to know that Gnau and Voss knew each other.

35. We learned that in July, 1985, Postmaster General ("PMG") Paul Carlin had announced that the Postal Service would immediately implement the "mid-course" correction and begin to acquire multiline OCR read capability. Carlin later would tell us that he made this decision under pressure from the Board of Governors and that much of the pressure came from Governor Voss.

36. We learned that Postmaster General Carlin insisted that multiline read capability be acquired through competitive testing and procurement. We also learned that respected objective observers, including Comptroller General William Bowsher, endorsed Carlin's insistence upon competitive procurement of multiline acquisition. GAI's Michael Marcus reported to us that Voss and REI were dissatisfied with competitive

procurement and wanted a sole source contract for REI. Governor Voss pressured Deputy Postmaster General Strange to authorize such a sole source contract. Marcus reported to us that discussions began among he, Gnau, Spartin, and REI officials about finding a way to replace Carlin, using Voss' and Spartin's influence within the Postal Service. One of Moore's "80/20" time management worksheets for October, 1985 and received by us in the investigation had under the heading "Problems" a notation in Moore's handwriting that read "Paul Carlin." A true copy of that document is attached hereto as Exhibit 7.

37. On January 6, 1986, Carlin was replaced by Albert V. Casey. Carlin had been PMG only one year, and there was speculation in the media and concern among Members of Congress that Carlin's termination was related to REI's efforts to obtain an OCR production contract. I and other Inspectors were aware of such reports and viewed the allegations as worthy of investigation. Attached as Exhibit 8 hereto is a true copy of a newspaper article, "*Casey's postal appointment spurs interest in REI stock*," Dallas Times Herald, Thursday, Jan. 9, 1986, we received during the investigation. Also attached as Exhibit 9 hereto is a transcript, DECISION OF THE BOARD OF GOVERNORS TO REPLACE POSTMASTER GENERAL, JOINT HEARING BEFORE THE SUBCOMMITTEE ON POSTAL OPERATIONS AND SERVICES AND THE SUBCOMMITTEE ON POSTAL PERSONNEL AND MODERNIZATION OF THE COMMITTEE ON POST OFFICE AND CIVIL SERVICE OF THE HOUSE OF REPRESENTATIVES, 99th Congress, Second Session, February 5, 1986, which we received during the investigation.

38. We learned that with Voss' assistance William Spartin had received several executive recruiting contracts from the Postal Service. We also learned that William Spartin, the president of GAI, had an apparent conflict of interest in that he was awarded the contract to search for Carlin's replacement. Spartin told us that he decided that he would conceal his role in GAI from the Postal Service in order to continue to receive executive recruiting work from the Postal Service. He also acknowledged later attempting to cover up his GAI affiliation with a backdated letter of resignation from GAI.

39. We learned that Spartin obtained Albert Casey's name by calling Moore and that Moore agreed to make an introductory phone call to Casey on Spartin's behalf

40. Spartin later told us that after our investigation began, Moore agreed to a false cover story to the effect that Moore had called Spartin with PMG candidates, rather than Spartin calling Moore. John Gnau also told us of conversations with Moore in which Moore had said that he was uncomfortable with the cover story that he and Spartin had agreed upon. Michael Marcus also told us that he had a conversation with Spartin in which Spartin told Marcus that Gnau, Spartin, Moore and Reedy all had talked and agreed on a cover story. Marcus also told us that Spartin said that Gnau, Spartin, Moore and Reedy had purged their files and that Spartin recommended that Marcus do the same.

41. On July 26, 1985, we interviewed Moore regarding the events under investigation. Moore described Gnau as a "worker bee, not a name dropping type of guy." He told us that Spartin was a name dropper, and that he (Moore) was unsure of the role Spartin played. Moore stated to us, "[w]e kind of ignored him." Moore

stated to us that when contacted about the PMG search he doubted at first whether Spartin was really conducting a search for a new Postmaster General. Moore explained that he did talk to Spartin and gave Spartin three names of PMG candidates. We were not satisfied with Moore's explanation. Moore's conduct in making an introductory telephone call to Albert Casey, a very prominent and well known business executive, whom Moore regarded very highly was not consistent with Moore's claim to doubt that Spartin was recruiting a new PMG. We did not understand why, if Moore really did not believe Spartin, Moore would bother someone as prominent as Mr. Casey with the matter. A true copy of our Memorandum of Interview that accurately sets forth Moore's statements in the interview is attached hereto as Exhibit 5.

42. We also had interviewed Moore's administrative assistant and secretaries regarding his office routine and how telephone calls were handled. Moore's staff indicated that important calls generally would be put through to him, but that for all other calls a message would be taken. We learned that around 4:00 each afternoon, Moore and his administrative assistant reviewed the day's calls and that Moore decided which calls he would return and which he would refer to other REI officers. The fact that Moore took Spartin's calls did not square with his statements downplaying his contact with Spartin.

43. Moore's claim of uncertainty as to Spartin's role and that "[w]e kind of ignored him" also was undercut by the number of telephone calls we learned of between Reedy and Spartin. My analysis of telephone records indicated 20 or more calls from Reedy to Spartin between January, 1986 and March, 1986. We learned that

soon after being interviewed by Postal Inspectors on April 8, 1986, the interview in which Reedy lied about the Voss referral, Reedy called Spartin.

44. Moore claim that REI ignored Spartin was undercut by a memorandum from Reedy to Moore dated April 8, 1985, in which Reedy wrote:

> Five weeks have elapsed since we presented "in camera" for the USPS Board of Governors in early March. Things continue to look as though we could get a significant order relatively soon. I don't have to tell you how fragile the situations is. I think you get some sense of this from talking to Spartin; however, I think the basic tactics are correct, the economics are on our side and we have chosen well, so let's see where it goes.

A true copy of this memorandum, which we received during the investigation, is attached as Exhibit 10 hereto.

45. In light of the evidence described above, we concluded that Moore and Reedy were not candid regarding their extent of dealing with Spartin.

46. The reports of coverup and file purges we received from Gnau, Marcus and Spartin appeared to be corroborated by REI's claim that it could not locate certain documents subpoenaed by the grand jury. Moore's telephone log for the period October 19, 1984 to January 15, 1985 (identified as Log No. 4) was never turned over to the grand jury. Telephone toll records for Moore for January, February, April, November and December 1984 and January 3 and 4, 1985 never were turned over to the grand jury. Reedy's telephone toll records for January-February, April-May and December, 1984 and January, March and April, 1985 never

were turned over. The Fall of 1984 was in our view a critical period during which Voss followed up Moore and Reedy, regarding his recommendation of Gnau and Reedy discussed the proposed consulting relationship with Gnau. The early months of 1985 also were a critical period because the REI-GAI consulting relationship began in early January, 1985, when Voss arranged for Gnau and Marcus to meet with the new Postmaster General, Paul Carlin. The absence of toll records for these periods and the absence of Moore's phone log (that would reflect messages taken by his staff) prevented us from analyzing these records and shedding further light on the activities of Moore, Reedy, Voss and Gnau during these times. We viewed REI's inability to locate these records as suspicious in light of the accounts of cover stories and file purges we heard from Gnau, Marcus and Spartin.

47. We learned that Moore maintained a spiral bound "Postal" Notebook. According to its pre-printed cover, the notebook should have contained 80 pages. During our July 26, 1986 interview of Moore, he referred to what he claimed was a copy of his Postal notebook. At the time, the original had not been provided to the grand jury. When the original later was produced to the grand jury, it contained only 44 pages. The other 36 pages were not accounted for. In addition, there appeared to be no entries between January and June, 1986. That appeared strange given the public outcry over Carlin's firing and Casey's hiring and the fact that, after Casey's appointment, REI and GAI were discussing whether and how to approach the Postal Service about OCR procurement. A true and complete copy of Moore's Postal Notebook as received

by us during the investigation is attached hereto as Exhibit 1.

48. In addition to the statements of Gnau, Marcus and Spartin, and the missing REI records and notebook pages, one of Moore's notebooks contained the following entry:

> "A lot of homework; drive a wedge between people"
>
> "(intimidate)",
>
> "Answer I don't know, I really can't remember",
>
> "Excitable".
>
> "All kinds of scenarios",
>
> "Ask same questions over and over",
>
> "Don't relax" "Long interrogation, tough questions at end)",
>
> "Possible subpoena".

A true copy of Moore's notes received by us in the investigation is attached hereto as Exhibit 11.

49. The above entry appeared suspicious. REI employees confirmed to the grand jury that these notes reflected Moore's comments at a staff meeting held on January 27, 1987. A true copy of this notebook page as received by the grand jury is attached hereto. By January 27, 1987, I already had made arrangements with REI's General Counsel, Thomas Loose, for Inspectors to visit REI the very next week for the purpose of interviewing REI staff. Moore's notes appeared to me to indicate that he was coaching his staff as to how they should approach the interviews with Inspectors. Of particular concern to me was Moore's apparent

instruction to his staff to "[a]nswer I don't know, I really can't remember."

50. I recommended to the United States Attorney the prosecution of Moore, Reedy and REI based on the evidence and my belief that it was sufficient to indict, prosecute and convict. I did not act out of any ulterior motive to punish Moore, Reedy or REI for criticizing the Postal Service's procurement decisions. To me, the issue was not criticism of the Postal Service, but the use of illicit influence through Gnau, Marcus, Spartin and Voss to corrupt the decision making of the Postal Service and thereby defraud the United States.

51. During the investigation, we reviewed the public statements of Moore, REI and others on the issues of OCR procurement. This was generally consistent with the advice given by attorneys Hardy and Carver of the Department of Justice and is good investigative practice. Public statements such as these provide evidence of the motives and intent of those involved in the events at issue. In attempting to persuade the United States Attorney not to indict them, Moore, Reedy and REI argued that obtaining an OCR production contract was not crucial to REI's corporate fortunes. The intensity with which Moore and REI lobbied the Postal Service Board of Governors and the Congress appeared to contradict that position. We also examined REI's contact with other public officials, including members of Congress, in order to ascertain whether any other public officials had been corrupted, as Voss was, by REI's relationship with Gnau and GAI.

52. I am the author of the document "Arguments for Indicting the Corporation." I have reviewed the document, a true copy of which is attached hereto as Exhibit 12. Although I do not now recall specifically the cir-

cumstances under which I prepared it, the apparent purpose of the document was to briefly set forth reasons why it might be appropriate to indict Recognition Equipment, Incorporated. The document sets forth certain "givens," a "conclusion" and several points that are set forth as the "basis" for the conclusion. The document's conclusion is that "[t]his is a case of an underlying corrupt corporate management strategy to obtain USPS business rather than the isolated and independent overzealous action of two corporate officers." Each of the paragraphs following the conclusion are the "basis" for the conclusion and serve to tie the corporate entity to the multiline OCR sales effort conducted by Moore and Reedy. The points that are the basis for the conclusion refer to actions of Moore and Reedy as well as actions of others, such as REI's general counsel and chief financial officer.

53. The statement that " [i]ndependent of Voss/GAI actions, the corporation and its PAC funded a media and political campaign to discredit USPS management and cause financial harm to USPS" and the examples that follow that statement were included to help demonstrate that the REI case was "a case of an underlying corrupt corporate management strategy to obtain USPS business rather than the isolated and independent overzealous actions of two corporate officers." I did not include such a statement to suggest to anyone that Moore should be prosecuted because he lobbied Congress or spoke in the media, and I would not expect the United States Attorney to be persuaded to indict by such a suggestion. I never believed or advocated that Moore should be prosecuted for those reasons. The document does not address whether Mr. Moore should be prosecuted. The statement was included, as were all

of the other statements in the document, because it helped demonstrate that Mr. Moore's and Mr. Reedy's actions, both legal and illegal, were part of a broader strategy implemented on behalf of the corporation.

54. I concluded that the lobbying and media efforts of REI were part of a broader effort, that included the use of the GAI consulting firm, to force changes in Postal Service procurement policy for the benefit of REI. It became my view that REI and Moore and Reedy legitimately could be prosecuted for their use of Gnau and the GAI firm. I concluded that because I also concluded that the evidence indicated knowledge on the part of Moore, Reedy and REI of the Voss kickback scheme and William Spartin's conflict of interest relating to changes in Postal Service managerial personnel. I also concluded that this scheme amounted to conspiracy to defraud the United States by trying to force changes in procurement policy on the Postal Service with the knowledge and expectation that those changes in policy would be corruptly and criminally influenced to REI's benefit by the actions of Voss, Gnau, Marcus and Spartin.

55. I also participated in drafting the document titled "Details of the Offense." In my experience, it is common for Postal Inspectors to include in memoranda submitted to United States Attorneys' Offices a detailed discussion of events they have investigated. This factual narrative often appears under a heading "Details of Offense." The document "Details of Offense" produced in our investigation of the Postal Service procurement scandal was designed to serve the same purpose. Where this document refers to lobbying and media contact by Moore, Reedy and REI it does so for the purpose of illuminating the events and transactions

at issue. This document was not intended to convey, and does not convey, any suggestion that Moore, Reedy or REI should be prosecuted for the purpose of retaliating for First Amendment activities. That was not my purpose, nor to my knowledge the purpose of any other Inspector who worked on the investigation, and I would not expect that the United States Attorney would be persuaded to indict by such a suggestion.

56. The decision to prepare summaries of information obtained in interviewing witnesses and to use those summaries in the grand jury was made by Mr. Valder. My understanding was that Mr. Valder had used this practice in past cases involving complex facts. We did not prepare the summaries for the purpose of falsely implicating Mr. Moore. The summaries also were not prepared to be used instead of live witnesses. I understood Mr. Valder's practice to be to read the narrative summary into evidence before the grand jury in the witness' presence and to ask the witness to adopt it in the presence of the grand jury. We did not use this practice to mislead the grand jury. We did not include any information in the summaries that was known by us to be false.

57. We did not "coerce or intimidate" William Spartin. We did nothing for the purpose of obtaining false testimony from Mr. Spartin for use against Moore. Mr. Spartin was represented by attorney Brian Gettings. Mr. Spartin entered into a non-prosecution agreement with the United States Attorney in April, 1986. With Mr. Getting's permission, we thereafter debriefed Spartin. Mr. Gettings consented to several of such debriefings without him or any other attorney from his firm being present. In the course of debriefing Mr. Spartin, we concluded that Mr. Spartin was not fully forth-

coming about events in which he was involved. Based on the answers that Spartin was providing in debriefings, I believed that Spartin was trying to protect his reputation and business prospects and was attempting to cooperate only to the extent the he did not implicate himself in the crimes under investigation. We identified six areas of misrepresentation by Mr. Spartin and summarized those in a document. The areas of Spartin's misrepresentation included: 1) That Spartin agreed to serve as GAI president as a favor to John Gnau, was a president in name only, did no substantive work for the firm, and received no compensation; 2) that Spartin embarked on a "one man crusade" to save former PMG Carlin's job and that his search was "above reproach;" 3) that Spartin did not intend to accept any funds from GAI because GAI's activities involving Voss were illegal and that Spartin only associated with GAI to help Spartin's firm, MSL International, obtain executive recruiting contracts and that Spartin did not associate with Gnau for any personal gain from any Postal Service contracts with REI; 4) that although Spartin arranged for Margaret Nunn (described to us as Voss' "girlfriend") to travel to three job interviews at MSL expense, Spartin was unaware that Voss and Nunn ordered additional airline tickets on MSL's account (we determined that in fact Spartin bribed Voss with free airline tickets); 5) that Spartin signed both of his March 1986 resignation letters, which were backdated to October 1, 1985 in order to cover up Spartin's conflict of interest (we learned that Spartin's son David signed the first letter, which Gnau refused to accept); and 6) that Spartin did not recall a meeting in Washington, D.C. on January 9, 1986 with Moore, Reedy, Frank Bray and Gnau (Gnau,

as well as Spartin's son David placed William Spartin there).

58. We raised our concerns with AUSA Valder and also discussed them with his supervisor AUSA William Block. Mr. Valder and Mr. Block were provided a copy of the document detailing Spartin's various misrepresentations. The United States Attorney's Office decided that a confrontation with Spartin was in order. An Inspector contacted Spartin to arrange a meeting at the United States Attorney's Office. Spartin was told that Mr. Gettings should attend. The purpose of the meeting was to confront Spartin with the misrepresentations described above.

59. It was at this meeting, where we confronted Spartin with the six areas of misrepresentations described above, where Mr. Valder tore up a copy of Mr. Spartin's nonprosecution agreement in the presence of Mr. Spartin and Mr. Gettings. The only purpose in tearing up the non-prosecution agreement was to emphasize to Mr. Spartin the seriousness with which the government viewed his failure to live up to the terms of his agreement.

60. No one threatened to prosecute Mr. Spartin's son, David, in order to coerce William Spartin to implicate Moore. We did discuss that Mr. Spartin's son was implicated in the conspiracy and contradicted William Spartin on a number of the facts as to which William Spartin was less than candid.

61. Although no one threatened to prosecute David Spartin, he was clearly implicated in the conspiracy and cover up. Our investigation revealed that David Spartin worked with William Spartin in connection with William Spartin's Postal Service recruiting. John Gnau

told us that he had informed David Spartin of the payoffs to Voss. When William Spartin attempted to cover up his conflict of interest as both the president of GAI and the man who recruited PMG Carlin's replacement, he enlisted David to draft and send to Gnau a backdated resignation letter to Gnau, which David Spartin signed for his father. David Spartin also lied to Postal Inspectors for the apparent purpose of covering up the fact that his father obtained Albert Casey's name from William Moore. David Spartin falsely told us that he was the one who found Casey's name while doing independent research on the PMG search project.

62. Mr. Valder did not tear up Mr. Spartin's immunity agreement in order to obtain false testimony for use against Moore. Although the extent of knowledge on the part of Moore, Reedy and REI was very much a subject of our investigation, the concern with Spartin at the time his nonprosecution agreement was torn up was his failure to be candid regarding the matters described above. It was not my purpose to coerce or intimidate Mr. Spartin and I have never coerced or intimidated a witness or taken any action to encourage a witness to give what I know to be other than truthful testimony.

63. The meeting at which Mr. Valder confronted Mr. Spartin and Mr. Gettings occurred in October, 1986. The polygraph test referred to in Moore's complaint where Spartin stated that he did not tell Moore or REI about the payoffs to Voss and was not present when anyone else might have told them occurred in December, 1986.

64. After the meeting in October, 1986, Mr. Gettings requested the opportunity to work with Mr. Spartin in the areas with which we were concerned. He also asked Mr. Valder for certain materials that Mr.

Gettings claimed would aid Mr. Spartin in recalling the events at issue. Mr. Valder provided those materials. Mr. Valder made the decision what materials to provide and gave them to Mr. Gettings to review with Mr. Spartin.

65. Mr. Gettings later informed us that Mr. Spartin claimed that his recollection was refreshed as the result of reviewing the materials Mr. Valder had provided. Mr. Gettings also said that Mr. Spartin had passed a privately administered polygraph and suggested that the government administer a polygraph. In light of Spartin's misrepresentations on other issues that we had documented, we decided to take Mr. Gettings suggestion and administer a polygraph regarding Spartan's statements that he did not tell Moore, Reedy, or REI of the Voss payoffs and was not present when anyone else might have told them.

66. The polygraph examination was administered by Inspector Norman Robbins. Inspector Robbins had no other role in our investigation. The result of the polygraph was no indication of deception on the issue of whether Spartin had told Moore or Reed of the Voss payoffs or knew of anyone else telling Moore or Reedy of the Voss payoffs.

67. Other than Mr. Gettings' statements that Mr. Spartin had passed a privately administered polygraph, we did not know how Spartin's polygraph examination would come out. The polygraph, like our confrontation with Spartin, was used for no other purpose than to ascertain the truth.

68. Inspector Kormann and I did not give former Postmaster General Paul Carlin a copy of a draft indictment to review. In late September, 1988, AUSA

Valder asked Inspector Kormann and I to verify certain facts in a draft indictment that had been prepared. Inspector Kormann and I interviewed Mr. Carlin at his home on September 22, 1988. Mr. Valder provided us a copy of the draft indictment, which Inspector Kormann and I took with us when we interviewed Mr. Carlin in order to verify the accuracy of some of the factual matters recited in the draft. Other than to tell Mr. Carlin that we wished to interview him regarding certain events relating to his service as Postmaster General, we did not further inform him of the purpose of our interview. We did not inform him that an indictment was being considered. We did not inform him that we had a copy of a draft indictment in our possession. We did not give Mr. Carlin a copy of the draft indictment.

I hereby declare that the foregoing is true and correct.

Executed on July 28, 2001

/s/ MICHAEL HARTMAN
MICHAEL HARTMAN

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civ. No. 92cv2288 (NHJ) (AK)
(consolidated with Civ. No. 93cv0324 (NHJ) (AK))

WILLIAM G. MOORE, JR., PLAINTIFF

v.

JOSEPH B. VALDER, ET AL., DEFENDANTS

DECLARATION OF JOSEPH B. VALDER

I, Joseph B. Valder, declare under penalty of perjury the following:

1. I have personal knowledge of the following facts, and, if called as a witness, could competently testify thereto.

2. I am an Assistant United States Attorney (AUSA) with the United States Attorney's Office for the District of Columbia, a position I have held since February 11, 1972. On May 8, 1986, I was assigned to work on a grand jury investigation, previously opened by AUSA Larry Barcella, into matters surrounding the Postal Service's procurement of optical character readers.

3. The investigation revealed that Peter Voss, a member of the Postal Service's Board of Governors, entered into an agreement with consultant John Gnau of Gnau & Associates, Incorporated (GAI), whereby Voss would refer clients to Gnau in exchange for a kickback on fees Gnau would be paid for obtaining government contracts for those clients. One such client was Recognition Equipment, Incorporated (REI).

Gnau agreed to split with Voss, and with GAI's President, William Spartin, and its Treasurer, Michael Marcus, a one percent contingency fee REI had agreed to pay Gnau if it received a United States Postal Service OCR production contract. As a result of the investigation, Voss pleaded guilty on May 30, 1986. Pleas by Gnau and Marcus followed on October 23, 1986, and January 20, 1987, respectively. On April 8, 1986, Spartin entered into a nonprosecution agreement with the United States Attorney's Office, as did Voss' assistant, Sharon Peterson, on September 8, 1986 and REI employee Frank Bray on June 9, 1987.

4. One question in the investigation concerned whether officials at REI knew of and participated in the conspiracy. Ultimately, the evidence convinced me that REI, William Moore and Robert Reedy must have known of and joined in that conspiracy. That evidence was wholly circumstantial. None of the admitted conspirators, Voss, Gnau, Spartin, Marcus or Peterson, ever claimed to have directly told Moore or Reedy about the criminal scheme. Instead, the entire premise of the government's case was that Moore and Reedy must have known of the conspiracy even though there was no evidence anyone ever openly discussed the existence of that conspiracy with them. Exchanges such the one between Reedy and Gnau in which Reedy asked "What is your deal with Voss" and Gnau responded that it was better that Reedy "not know"' the answer to that question, seemed to me a conclusive example of the conspirator Gnau's intention not to overtly discuss the conspiracy. My experience as a prosecutor had taught me that sophisticated criminals, especially those engaging in white collar fraud, are

careful to avoid conversations in which directly incriminating information is exchanged.

5. I never presented the matter to the grand jury as anything other than a circumstantial case where there was no direct evidence Moore and Reedy had been told of the conspiracy. For example, on March 19, 1987, I told the grand jury "we are now looking at some officials at a corporation in Texas that was involved. And the question is whether any of them should be indicted or not. It's really quite unclear at this time. Our sense is maybe there will be sufficient evidence to seek an indictment against one or more of them. But it's unclear." Exhibit 1 at 3-4. That same day I said to the grand jury that "[t]here is really only one question in this case anymore. And that is whether Reedy knew that he was, and participated, in acts which resulted in Voss being paid money in a personal capacity for official acts and influence at the Postal Service. And the same question as to Mr. Moore." *Id.* at 23-24.

6. On September 1, 1987, I told the grand jury:

> [I]t is very clear that there was a conspiracy. It is very clear that Reedy and Moore participated in all of the affairs and the events of the conspirators trying to get business from the Postal Service and getting a new PMG in, et cetera. The only question is whether there was knowing participation. And that is knowledge that there was a scheme to defraud going on, a conspiracy to defraud, bribery going on if they had—you know, since they clearly participate, because, you know, they are paying money to Gnau and giving him more money and all that, if while they are participating they are knowingly participating in the scheme to defraud, then

> that is the question you know. Do they have knowledge that there is a conspiracy going on or a scheme to defraud? That is the only question. And it is a very difficult question. And that is why we have these long statements, you know, getting down all these tiny little facts and facts and facts of who knew what when. That's what it really boils down to.

Exhibit 2 at 4-5. I also told them that

> the only place that there is any question about who knew what or who did what is that tiny, tiny area of what—to what degree of knowledge do Reedy and Moore have about, you know, did they know that Peter Voss was getting paid off. And that is why it comes back to that question of when Reedy says. you know, what is your arrangement with Voss in light of all this success and all that is going on, and Gnau says, 'It is better you not know.' What does the honest straight person say, they say 'What do you mean it's better I not know? I got to know. I mean, you can't have any kind of illegal relation with Voss. If you are paying him. I have got to go to the police or I have got to go to the FBI or something like that." And that might be what an honest person does. Or a person who is not involved knowing a criminal, et cetera.

Id. at 9-10.

7. On February 6, 1988. I told the grand jury "[n]ow, the thing that is interesting about this case is it is abundantly clear, and nobody will ever argue that there wasn't a conspiracy. It's abundantly clear, and nobody will ever argue that, REI did participate in it. You know, they where there, they retained Gnau, they

did this, they paid money, et cetera, da, da, da. The only question is whether REI knowingly participated in it. . . . . Did they knowingly participate in the conspiracy? That's a question. Okay. And that's why you have heard so much about names, dates and places, and who said what, who did what, et cetera. . ." Exhibit 3 at 14-15.

8. On February 23, 1988, while commenting on witnesses William Hittinger and Thomas Ringer, who were members of REI's Board of Directors, I told the grand jury

> The reason, in essence, that we've asked these gentlemen to come here is that we think it is relevant what they weren't told by Moore and [Reedy]. This whole pattern of Voss meeting with [Reedy], Voss calling, why haven't you hired non-associates [*sic*] [Gnau and Associates] . . . , agreeing to paying them one percent contingency fee; there's all sorts of things that, by and large, weren't told to the directors. It appears that one might conclude that they should have been told or would have been told some of this stuff, unless there was a reason to conceal from them this information, because it was known to Moore and [Reedy] that there was a crime afoot, and they were part of it.

Exhibit 4 at 2.

9. On October 4, 1988, while summing up to the grand jury why an indictment should be returned against REI, Moore and Reedy, I said the following:

> Let me just say in wrapping this up for you, ladies and gentlemen, it is a very large case in a sense. And the circumstances of cases are always like the

picture puzzle, the thousands and thousand of pieces, et cetera. And, you know maybe when Voss went and talked to Reedy and said, you know 'Gee, you need a new consultant,' you know, that's probably not enough to make him there is a scheme. But the repeated attempts by Voss, you know, 'Why haven't you signed the contract? Why haven't you signed the contract?' And then I think as you have known from the evidence, once they agree to the contract, Voss never calls him again. And, you know, then all of the good fortune happens. And no matter what, as that one chart shows, when it gets down to the point that Voss takes the document and gives it to Marcus at the Board of Governors meetings and Marcus a couple hours later gives it to Voss or to Moore and Reedy and Moore says, 'Well, that's good. I can use this at my testimony three days from now.' It all comes together right there. That it even doesn't have to be very *circumstantial* anymore. But that they know that they've got somebody who must be getting paid, that he's stealing documents for them. The whole PMG thing, getting Spartin in with the conflict, and Spartin calls him up and says—or Gnau calls and said, 'Spartin has got the contract. We think you guys should make the choice or the call.' Those are just some of the real main points. There is tons and tons of small things that fit together. But those are the main points of why we would recommend to you that it is appropriate to vote to indict this case.

Exhibit 5 at 18-19 (emphasis added).

10. The case was like a complicated puzzle of ten thousand pieces. One way I chose to make the evidence easier for the grand jury to evaluate was to employ

summary statements of witnesses. I had previously used such summaries in other cases. The summary procedure was not used in lieu of presenting live witnesses to the grand jury that investigated Moore, Reedy and REI. Instead, each witness whose testimony was presented in this manner was summoned before the grand jury, was present while I read the summary, and was asked to vouch both that the summary was read correctly (the witness was always requested to read along) and that it was true and accurate. Usually, but not always, I would also ask questions of the witness, and the grand jury was always presented the opportunity to do the same. The Postal Inspectors assigned to the investigation had written drafts of the witness summaries, based on their interview(s) of the witness. Before going into the grand jury, the witnesses were always provided with draft(s) and asked to offer any changes they might have. I made the final decision as to what would, or would not, be included in the summary statement as being appropriate evidence for the grand jury to hear. The summaries were read to the grand jury, and always recorded but not always transcribed. All summaries read to the grand jury were made grand jury exhibits.

11. One witness for whom the summary statement procedure was used was Frank Bray. Mr. Bray and his attorneys, Ellen Huvelle and Christopher Kearny, worked with me as well as with Postal Inspectors Frank Kormann and Michael Hartman at the United States Attorney's Office, over several days, to draft a summary statement. The negotiations over the content of Mr. Bray's summary continued into the early morning hours of the day of his grand jury testimony. I was not present for all of the negotiations, having left

some hours earlier due to a prior commitment. When I returned in the morning, Inspectors Kormann and Hartman informed me that they had worked through the night but had not been able to come to an agreement with Mr. Bray and his counsel over the contents of the final paragraph of Mr. Bray's summary statement. I resolved the matter by agreeing with Mr. Bray's counsel, Ms. Huvelle and Mr. Kearney, that we would delete the paragraph and that Mr. Kearney would give me, instead, a list of eight questions from which I, in my discretion, would choose to ask Mr. Bray before the grand jury those which I believed to be appropriate. A true and correct copy of the list of eight questions is attached to my Declaration as Exhibit.

12. On the afternoon of October 24, 1986, I met with William Spartin and his attorney, Brian Gettings. Also present at this meeting were Postal Inspectors Kormann and Hartman. I believe Postal Inspector David Smith also attended. I do not recall for sure whether Postal Inspectors Robert Edwards or Pierce McIntosh were there or not. On April 8, 1986, Spartin had entered into a nonprosecution agreement with the United States Attorney's Office, under which he was obligated to cooperate in the investigation and to provide truthful information. In my estimation, Spartin appeared not to be living up to that agreement. With Mr. Gettings' permission, Inspectors Hartman and Kormann had been debriefing Mr. Spartin throughout the summer of 1986, usually without Mr. Gettings or myself being present. Inspectors Hartman and Kormann reported to me their concern and information showing that Spartin was not providing complete and truthful information, and I then concurred in that assessment. After consulting with my supervisors at the U.S. Attorney's Office, Assistant

United States Attorneys William S. Block and Steven R. Spivack, and sharing with them a document prepared by the Postal Inspectors that detailed Mr. Spartin's misrepresentations, a copy of which is attached to this declaration as Exhibit 7, I decided to confront Mr. Spartin with proof of his falsehoods and to impress upon him the seriousness of his failure to abide by the terms of his nonprosecution agreement by tearing up a copy (not the original) of that agreement. Mr. Spartin and Mr. Gettings were asked to come to a meeting at the United States Attorney's Office. At that meeting, I told Mr. Spartin that I did not believe he was telling the truth, and I tore the copy of the agreement in half, as I had planned to do with my supervisors. I kept the torn copy in my case file, and it was admitted as exhibit during the trial of Moore, Reedy and REI.

13. During and after the October 24, 1986, meeting, Mr. Gettings told me that Mr. Spartin was not making deliberate misrepresentations but instead was simply unable to recall certain events. In response to Mr. Gettings' representations, my supervisors and I agreed that, to be fair to Mr. Spartin if there was a possibility we might revoke his non-prosecution agreement, we should allow Mr. Spartin to refresh his recollection to the fullest extent possible. In an effort to refresh Mr. Spartin's recollection thereafter, I allowed him and his counsel to review documents, most of which were copies of his own personal records. In addition, again in an effort to refresh his recollection, I showed Mr. Spartin and Mr. Gettings a collection of excerpts from the summary statements of Sharon Peterson, Michael Marcus, John Gnau and Peter Voss. I did not tell Mr. Spartin that he was being shown grand jury information nor did I regard the summaries as such. In my view

the summaries were not grand jury information because they had an existence separate and apart from the grand jury process.

14. Shortly before I asked the grand jury to return an indictment against Moore, Reedy and REI, I asked Inspectors Kormann and Hartman to interview former Postmaster General Paul Carlin in order to verify the accuracy of certain facts set forth in the then current draft of the prospective indictment. Inspectors Kormann and Hartman, following my directions, interviewed Mr. Carlin and reported to me the results of that interview.

15. The decision by United States Attorney Jay Stephens to seek the indictment of Moore, Reedy and REI was the culmination of a series of twenty-four separate meetings I had with varying combinations of my supervisors both in the United States Attorney's Office and the Department of Justice starting on February 17, 1988, and ending on September 30, 1988. In each of these meetings, I stated my strong belief that the evidence gathered by the United States Postal Inspection Service and presented to the grand jury was sufficient to ask the grand jury to return an indictment. In addition, on September 22, 1988, I attended a meeting at which counsel for Moore, Reedy and REI presented to Mr. Stephens their arguments in support of their contention that no indictment should be sought. On September 30, 1988, I was present when Moore, Reedy and REI's counsel met with John C. Keeney, then Deputy Assistant Attorney General and Mr. Stephens, and again presented their arguments against indictment. After the meeting with REI's counsel, Mr. Keeney, however, determined that he would not take a position either for or against Mr. Stephen's pending

decision to seek an indictment. Ultimately, Mr. Stephens determined that the grand jury would be asked to return an indictment

16. After reviewing my diary entries for October 3, 1988 (the next business day after the Keeney meeting referred to in the previous paragraph), I recall that REI attorneys John Cooney, Marshall Searcy, Tom Loose and Robin Hartman proposed to me that REI would enter a misdemeanor plea and pay a fine of some amount in return for the United States not seeking an indictment of REI, Moore and Reedy. After discussions with my supervisors, this proposal was rejected.

17. That the case against Moore, Reedy and REI was entirely circumstantial was made known by me to all of my supervisors and Department of Justice officials and all of our communications about the case took that into account. There was never any suggestion made that, or question raised about whether, any of the co-conspirators had explicitly told Moore or Reedy of the conspiracy. I advised all of my supervisors that no one had directly told Moore or Reedy of the conspiracy and that the case was based on circumstantial evidence that Moore and Reedy must have known. The persuasiveness of that circumstantial evidence was heavily debated during the course of my many discussion with my supervisors. Charles Leeper who was Deputy Chief of the Special Prosecutions Section of the United States Attorney's Office was of the view that evidence was insufficient to warrant proceeding with the case. I was present at meetings during which Mr. Leeper expressed to Mr. Stephens his (Mr. Leeper's) mind set that the evidence developed in the investigation was not strong enough to proceed. Paul L. Knight, then the Chief of the Special Prosecutions Section initially

shared Mr. Leeper's view of the evidence. Eventually, however, Mr. Knight told Mr. Stephens, other relevant supervisors and me that he had changed his mind and had come to believe that the evidence was strong enough to warrant seeking an indictment. Ultimately, after meeting with counsel for Moore, Reedy and REI and with further review by Mr. Keeney all of which are described above, Mr. Stephens decided that an indictment should be sought against REI, Moore and Reedy. Mr. Keeney had declined to interfere with that decision and on October 6, 1988, the grand jury voted to indict and did return an indictment against REI, Moore and Reedy.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ JOSEPH B. VALDER
JOSEPH B. VALDER
Assistant United States
Attorney

Dated: July 30, 2001

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civ. No. 92cv2288 (NHJ) (AK)
(consolidated with Civ. No. 93cv0324 (NHJ) (AK))

WILLIAM G. MOORE, JR., PLAINTIFF

v.

JOSEPH B. VALDER, ET AL., DEFENDANTS

DECLARATION OF ROBERT J. EDWARDS

I, Robert J. Edwards, declare under penalty of perjury the following:

1. I have personal knowledge of the following facts and, if called as a witness, could competently testify thereto.

2. I am an employee of the United States Postal Service, currently employed as a Manager for Global Business Development. From 1975 until 1999, I was employed as a Postal Inspector with the United States Postal Inspection Service. In mid-1985, while I was employed as an Inspector in the Office of Audit, Chief Postal Inspector Charles Clauson asked me to monitor the procurement process for the purchase by the Postal Service of multi-line read optical character scanning equipment. Chief Inspector Clausen told me that I should keep a close eye and ear on what was going on with the procurement, due to concerns about the actions of some members of the Postal Service Board of Governors. I had previously been employed as an Inspector in the Special Investigations Division of the

Inspection Service, where among other things, I had worked on, learned the history of, and reported concerns about the Postal Service's automation efforts.

3. Optical character reading equipment is used by the Postal Service to read, code and sort letter mail for delivery. Beginning in 1960, the Postal Service contracted with various private companies for research, development and funding of automated systems to read, code and sort mail. Among the systems developed were single-line optical character readers (SLOCRs) and multi-line optical character readers (MLOCRs). SLOCRs worked by reading the last line of a piece of mail and using the information found there to code and sort the mail for delivery. For the most efficient sorting, the SLOCR equipment was largely dependent on the application by the mailer of a nine-digit zip code, also known as "Zip + 4." The MLOCR equipment was designed to read more than one address line and translate the information into a bar code corresponding to the nine-digit zip code for that address. It was not dependent on Zip + 4 use by the mailer. During the 1970s, Recognition Equipment Incorporated (REI) received research and development contracts from the Postal Service to develop a multi-line OCR.

4. In 1984, the Postal Service, with the unanimous endorsement of the Board of Governors, elected to purchase single-line OCRs and to wait until 1987 to decide whether it needed to use multi-line OCRs such as those REI wished to sell to the Postal Service. The Postal Service determined that if large institutional mailers could be persuaded to use Zip + 4, the savings captured on volume mail would make the single-line machines the most cost-effective choice. It therefore offered rate incentives to volume mailers in order to

encourage them to employ the nine-digit zip code. The plan was to reevaluate the situation in 1987 in case Zip + 4 use by large volume mailers failed to meet projections. If that happened, the Postal Service would then acquire multi-line equipment, most likely through the retrofit of single-line OCRs. The purchase of the single-line machines was known as the "Phase II" procurement.

5. As a result of the performance of my official duties, I became aware that, early in 1985, a concern developed that the Technology and Development Committee of the Board of Governors was pressuring postal managers to accelerate the purchase of multi-line OCRs. However, when Mr. Clauson assigned me to monitor the multi-line effort, that concern was considered a developmental audit issue. The Inspection Service was monitoring the overall Postal Service automation program for the purpose of detecting and preventing waste, fraud and abuse. This monitoring was known as a developmental audit. Although the facts disclosed by the developmental audit of the OCR procurement raised questions, both to me and to others in the Postal Service, about the conduct of some members of the Board of Governors, at the time of my assignment to the developmental audit no criminal investigation had yet been initiated.

6. As a result of conducting my official duties, I learned that, on July 8, 1985, the Board of Governors conveyed to Postmaster General Paul Carlin its view that the decision on a midcourse correction should be made immediately rather than waiting until 1987 and that the Postal Service should change its course to employ MLOCRs rather than SLOCRs. On July 14, 1985, Postmaster General Paul Carlin informed the

Board of Governors that postal management was unequivocally committed to this midcourse correction to bring the Postal Service into a full multi-line environment, whether it be by acquiring new multi-line machines, modifying single line machines by retrofitting them to take on multi-line capability or by some combination of these approaches. The Postal Service then announced new procurement for both multi-line OCRs (known as the "Phase II" procurement) and for kits to retrofit the newly-acquired Phase II single line machines (the "Phase IIA" procurement.)

7. Chief Postal Inspector Clauson informed me that, on July 18, 1985, Deputy Postmaster General Jackie Strange reported to him that Peter Voss, who was Vice Chairman of the Postal Board of Governors, was strongly pressuring her to steer the procurement of multi-line OCR's to Voss' preferred vendor REI. Mrs. Strange said that she had no evidence of criminal conduct but was concerned about Mr. Voss' motives and feared he was motivated by some personal interest rather than the best interests of the Postal Service.

8. Mr. Clauson told me that, on July 26, 198, Mrs. Strange told him she had reevaluated the situation and now thought that Voss had the best interests of the Postal Service at heart and attributed his actions to the intense atmosphere surrounding the issue of MLOCRs that had resulted in "hard exchanges" between she and Voss. Mr. Clausen told me that Mrs. Strange's changed story raised his suspicions about the possibility of improper conduct by Voss. My own suspicions were also raised by Mrs. Strange's conflicting reports.

9. Another event that aroused my suspicion was an allegation made to the Inspection Service by officials of AEG Telefunken, a West German company, against

William G. Moore of REI. The allegation arose from the Phase IIA retrofit progam. Using technology licensed from Telfunken, Electrocom Automation (ECA) of Arlington, Texas had won the 1984 "Phase II" single-line competition. ECA now was competing for a contract to conduct the Phase IIA retrofitting of those machines, as was REI. In order to develop a retrofit kit, REI needed technical information from ECA. ECA and Telefunken were concerned about revealing trade secrets to a competitor. According to a report made by ECA and Telefunken to the Postal Inspection Service, at a meeting on October 17, 1985, Moore had proposed that the two companies split the procurement, with ECA and Telefunken taking the contract to retrofit their machine and REI taking the contract to manufacture new MLOCRs. The companies also reported that Moore had said he would use his political influence to end the retrofit program unless they agreed to the contract-splitting proposal.

10. On November 6, 1985, Postal Inspector Michael Hartman and I interviewed Telefunken's Kurt Scheidhauer, and, on November 7, 1985, we interviewed Leopold Dieck, also a Telefunken official, regarding their allegations against Moore. On November 19-20, 1985, we interviewed Moore as well as REI officials Robert Reedy and Frank Bray about the allegations made by Telefunken. Near the end of the interview of Moore, Reedy and Bray, Inspector Hartman asked whether any of them had met individually with members of the Board of Governors. Reedy said no, and Moore and Bray indicated agreement.

11. After conducting these interviews, Inspector Hartman and I met with attorneys William Hardy and Allen Carver of the United States Department of

Justice Criminal Division's Public Integrity Section. Mr. Hardy was the Supervisor of the Public Integrity Section's Fraud Division. He met with us for more than two hours (we met with Carver more briefly), during which time we told him about Deputy Postmaster Strange's allegations about Voss and the OCR program and about Telefunken's contract-spitting allegations against Moore. Hardy and Carver told us that there did not appear to be direct evidence of a federal crime, at least at that point, but advised us that we should continue to investigate. Hardy told us that in his opinion, gratuities would be forthcoming and that we should research financial statements and other evidence to determine whether illegal payments were being made. Hardy and Carver told us that we should investigate whether anyone at REI had made a false official statement and suggested that we investigate REI's intention and capability of actually competing on the Phase II conversion program, also known as Phase IIA. They also told us that we should be alert for a pattern of irregular, possibly unethical behavior, examine the postal contracting regulations governing sole source procurement and consider the relevance of those regulations to the multiline OCR procurement. Hardy and Carver also advised that we should have further discussions with Mrs. Strange about her original allegations.

12. After meeting with Hardy and Carver, I prepared a memorandum to Chief Postal Inspector Clausen, from Inspector Hartman and I, dated November 8, 1985, recording what had been discussed during the meeting, a true and correct copy of which is attached to this declaration as Exhibit 1. In the memorandum, Inspector Hartman and I told Chief Inspector Clausen

that the approach we would be taking pointed toward conspiracy, mail fraud and ethics violations, and that an investigation of this sort would require full time attention. We also outlined the initial steps we felt should be taken to determine whether or not any crime might be afoot. We suggested that Inspector Hartman go to Chicago in order to review OCR acceptance tests that were being conducted there and to see an REI machine that was then operating in a Chicago post office. We also suggested creating a complete subject file, including Congressional testimony and REI correspondence, and using that information to prepare a narrative brief of the salient points. I viewed all of these actions as implementing the investigative steps outlined by Hardy and Carver, that is, to look for evidence of illegal gratuities and, by examining REI's intention and capability of actually competing in the procurement, to evaluate whether REI might have made a false official statement. Mr. Clausen approved our plan and a task force was eventually established to look into the OCR procurement.

13. Our purpose in undertaking these inquiries was not to retaliate against anyone because of their protected First Amendment activity, but rather to determine whether there was evidence of any criminal activity connected to the OCR procurement. As Hardy and Carver had advised, to make that determination, it was necessary to investigate REI's intention to actually compete on the procurement and its capability to do so. The steps REI had already taken in pursuit of the contract, including any statements to members of Congress or other government officials, seemed to me one source of evidence about the company's motives and its capability of actually competing for the procurement.

14. On February 23, 1986, at the request of Chief Inspector Clausen, I flew to Sarasota, Florida, in order to attend a February 24, 1986, meeting of the Board of Governors' Technology and Development Committee. While seated in the coach section of a Presidential Airways flight to Sarasota, I observed Peter Voss board the plane and sit in the coach section. He did not appear to notice me. The next day, during a lunch with the meeting attendees, there was a casual conversation about the availability of airline service into Sarasota, during which someone mentioned that Presidential Airways had just begun to fly there. In my presence, Mr. Voss said to the other participants in this conversation that he had never flown on Presidential and had flown to Sarasota on United Airlines instead. Having observed him on my Presidential Airways flight the day before, I knew that Voss' statement was untrue. I also knew that, as member of the Board of Governors, Voss was authorized to travel by first class at government expense. My suspicions were aroused by this unusual, irregular behavior by Voss and I decided to conduct a review of the Board of Governor's travel vouchers and expense records.

15. That review showed that Voss was submitting false claims for travel and administrative expenses. He would purchase a first class ticket , but instead of using it, would return it for credit and pay cash for a coach ticket. He would then use the coach ticket for his official travel and pocket the difference. He also lied about his itineraries in order to inflate the amount of official travel reimbursement he claimed. Through these means, Voss was able to defraud the government of more than $44,000 in travel expenses.

16. The matter was brought to the attention of Assistant United States Attorney Larry Barcella of the United States Attorney's Office for the District of Columbia. Mr. Barcella opened a grand jury investigation and Voss' financial records were subpoenaed. Among the documents received as a result of the subpoena were checks from REI consultant John Gnau to Voss' company. After investigating further, we learned that Voss was being paid kickbacks by Gnau in order to steer the OCR procurement to REI. The gratuities that Department of Justice attorneys Hardy and Carver had predicted were thus revealed and, on May 30, 1986, Voss pleaded guilty to federal criminal charges.

17. Our investigating showed that joining Gnau and Voss in this criminal conspiracy was Michael Marcus, an employee of GAI and William Spartin, an executive recruiter. Spartin, who had received a contract to recruit a replacement for Postmaster General Paul Carlin was president of MSL International Consultants, Ltd. and, as it turned out, was also president of GAI. REI had agreed to pay GAI a one percent contingency fee if it received an OCR production contract. We learned in our investigation that the potential value of the procurement was something between $250 and $400 million. Gnau, Voss, Marcus and Spartin entered into an agreement to split the contingent fee Gnau would receive, which would have amounted to approximately $2.5 to $4 million. Gnau and Marcus entered guilty pleas, while Spartin entered into a nonprosecution agreement with the United States Attorney's Office under which he agreed to cooperate and provide truthful information in the investigation.

18. While I was working on the criminal investigation, Chief Inspector Clausen asked me to assist in preparing a report for the House of Representatives Committee on Post Office and Civil Service. Mr. Clausen reported to me that, on June 6, 1986, the members of that Committee had sent a letter to him requesting a comprehensive written report of the Inspection Service's findings on all non-criminal matters relating to the Postal Service's "Zip + 4" program, the purchase of OCRs, and the process by which the expenses of the Board of Governors were processed and audited. I was given a copy of that letter at the time Mr. Clausen assigned me to the project and a true and correct copy is attached to this declaration as Exhibit 2. In accordance with Chief Inspector Clausen's direction, I assisted in the preparation of what came to be called the "Zip + 4 / Automation Investigative Report," the final version of which was provided to Congress in January 1987. I was responsible for preparing all but one section of that report. The section I did not prepare was entitled "Conspiracy Investigation." The Zip + 4 / Automation Investigative Report was prepared solely for the purpose of responding to the request by the House Committee on Post Office and Civil Service for such a report.

19. In October 1986, I was present during a meeting between AUSA Joseph Valder, Spartin and Spartin's attorney, Brian Gettings, at which a copy of Spartin's nonprosecution agreement was torn in half by AUSA Valder. I recall that Postal Inspectors Frank Kormann and Michael Hartman also attended this meeting. Inspector David Smith may also have been there, but I am not sure of that. I do not recall whether Inspector Pierce McIntosh was present. I recall that in the

meeting AUSA Valder said, in substance, that he thought Spartin had not been telling the government the truth. At some point, AUSA Valder tore the agreement in half. I do not recall whether I knew in advance that this would occur, but when it happened, I thought that it was not a very convincing display by Mr. Valder. To me, the event seemed contrived and I was not convinced that Mr Valder had any serious intention of revoking Mr. Spartin's nonprosecution agreement.

20. My involvement with the Task Force ended in January 1987. I did not participate in any way in the recommendation I understand was later made by the Inspection Service that the United States Attorney should seek the indictment of William Moore.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ ROBERT J. EDWARDS
ROBERT J. EDWARDS

Dated:

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civ. No. 92-2288 (NHJ) (AK)
(consolidated with Civ. No. 93-0324 (NHJ) (AK))

WILLIAM G. MOORE, JR., ET AL., PLAINTIFFS

v.

JOSEPH B. VALDER, ET AL., DEFENDANTS

DECLARATION OF FRANK W. KORMANN

Pursuant to 28 U.S.C. § 1746, I, Frank W. Kormann. hereby make the following unsworn declaration in support of the United States Defendants' Motion for Summary Judgment.

1. I have personal knowledge of the following facts and if called as a witness could testify competently thereto.

2. Between 1974 and 1999, I was employed by the United States Postal Inspection Service as a Postal Inspector. The mission of the Postal Inspection Service is safeguarding the integrity of the United States mails and the integrity of the United States Postal Service systems, operation and property.

3. In December, 1985, I was assigned to work on the investigation of optical character reader ("OCR") procurement. I worked on the investigation through the indictment, trial and acquittal of William G. Moore, Jr., Robert W. Reedy and Recognition Equipment, Incorporated ("REI"). I became very familiar with the

facts and circumstances under investigation and the evidence obtained in the investigation.

4. As the result of the evidence the Inspection Service and the grand jury obtained in the course of the investigation, we determined that REI hired John Gnau and his consulting firm, Gnau and Associates Incorporated ("GAI") in an effort to sell multiline optical character reader equipment to the Postal Service. We also determined that GAI paid kickbacks to Postal Governor Peter E. Voss from fees REI paid GAI and that Voss, Gnau, Michael Marcus and William Spartin of GAI planned to split a one percent contingent fee REI promised to pay if REI obtained an OCR production contract.

5. As the result of our investigation, I concluded that REI and William G. Moore, Jr. and Robert Reedy acquired knowledge of the Voss-Gnau kickback scheme and of a personnel recruitment scheme by which William Spartin would use executive recruitment contracts received from the Postal Service to place postal officials thought favorably disposed to REI. Because I concluded that Moore, Reedy and REI acquired such knowledge in the course of their efforts to sell REI's OCR system to the Postal Service, I also concluded that Moore, Reedy and REI joined a conspiracy to defraud the United States. All of my actions taken in respect of Moore, Reedy and REI were taken in a good faith effort to ascertain the truth and to bring to justice those I believed had committed prosecutable offenses. Neither I, nor any other Inspector working on the OCR procurement investigation, sought to prosecute Moore to retaliate for his criticism of Postal Service procurement decisions. I had no personal or professional stake in what kind of OCRs the Postal Service purchased,

whom it purchased them from, or how any procurement of OCRs might be structured. My only interest was in understanding how the conspiracy we uncovered operated and how it might have corrupted the decision making process.

6. It is difficult to fully detail all of the evidence that led me to conclude that Moore, Reedy and REI knowingly participated in the conspiracy we uncovered. I assisted in preparing for the United States Attorney a document titled "Details of Offense" that accurately lays out the facts and circumstances upon which I based my conclusion that Moore, Reedy and REI knowingly participated in the conspiracy to defraud the United States. A true copy of that document is attached as Exhibit 1 hereto.

7. Among the facts upon which I concluded that Moore, Reedy, and REI knowingly conspired to defraud the United States are the following: In 1984, REI did not win the Postal Service's Phase II procurement for single line OCR machines. That, and the fact that the Postal Service planned not to revisit the question whether to acquire multiline OCR technology for some time, meant that REI had no immediate prospects of Postal Service business, and REI appeared prepared to abandon its postal program. Governor Voss made personal telephone contact with REI President Moore, and Voss and REI Vice President Robert Reedy dined together over the Labor Day weekend in 1984. At that meeting, Voss recommended that REI hire a new consultant, John Gnau and his firm Gnau and Associates, Incorporated ("GAI") to market its OCR system to the Board of Governors and the Postal Service. According to Moore's account when we interviewed him on July 25, 1986, Reedy reported to him afterward on Reedy's

meeting with Voss, and Moore was anxious to hire the consultant Voss recommended.

8. Between September and December, 1984, Voss followed up with a number of telephone calls to Reedy and Moore apparently encouraging them to hire Gnau. I thought this level of interest by a governor in a potential vendor's choice of consultant was suspicious and that Moore and Reedy, as astute businessmen, also should have thought so. Just about the same time that REI retained GAI in early January, 1985, there was an abrupt discontinuance of telephone contact between Moore and Reedy, on the one hand, and Voss on the other, with no evidence of any further telephone contact between Moore and Reedy and Voss. I thought the abrupt discontinuance of telephone contact also was strange. In my view, if Voss truly were an "independent ally" of REI, as Moore, Reedy and REI later would claim, there was no logical legitimate reason why Moore, Reedy and REI would not continue direct communication with that ally, especially given an ally so highly placed. I was aware that Moore had often communicated directly with high level Postal Service officials in the past, including Governor Voss and former Postmaster General William Bolger.

9. When interviewed on April 8, 1986, Reedy lied to Inspectors about how REI came to retain GAI. In my experience as a criminal investigator, people lie to investigators about important facts in order to avoid the detection of their criminal acts and the criminal acts of others. It also appeared that Reedy, Moore and REI's Frank Bray lied in a November 20, 1985 interview when they were asked if they had ever met individually with a member of the Board of Governors, and they indicated that they had not.

10. John Gnau told us of various conversations with Reedy that in my view, reflected a tacit understanding and acceptance of the Voss-Gnau relationship. According to Gnau, Reedy on occasion asked in substance what Gnau's relationship was with Voss. Gnau said that he always told Reedy that it was better Reedy not know. Gnau told us that he told Reedy not to refer to Voss by name, but as "our friend" and Reedy responded "I understand." Gnau reported that prior to a meeting with several Governors, including Governor Voss, he told Reedy that the other Governors did not need to know that Gnau and Voss knew each other. Gnau stated that at a time when he negotiated fees for a public relations contract with REI, Reedy remarked to Gnau that he knew Gnau had people to "take care of." Gnua told us that his impression at the time of the conversation was that Reedy meant Voss. GAI's Michael Marcus told us that on one occasion either Moore or Reedy remarked to Gnau and Marcus "[w]hy don't you get Peter Voss to order sole source?" Moore's notes contained an entry, dated April 29, 1985, that read: "Consultant wired—(Peter Voss)."

11. GAI's Michael Marcus told us that Voss leaked internal confidential Postal Service information to him and that he shared it with REI's Reedy and Bray. With Reedy's and Bray's assistance, Marcus prepared memoranda and position papers that he sent to Voss and that Voss circulated within the Postal Service while misrepresenting them as his own work product. Moore's notes also reflected Moore's knowledge of closed Board of Governor's sessions. For example, one such entry reflected topics under discussion by the Governors and apparent positions of various Governors, under the healing "Closed Session."

12. In interviews, Moore and Reedy appeared to downplay the extent and nature of their contact with Spartin. For example, Moore told us in an interview on July 25, 1986 that he was uncertain of GAI president William Spartin's role in GAI efforts and said "[w]e kind of ignorerd him." Moore acknowledges, however, that Spartin called him for candidates to replace Paul Carlin as Postmaster General ("PMG") but claimed that he did not at first believe that Spartin was recruiting for a new PMG. Moore, however, assisted Spartin both by providing him with the name of Albert Casey and making a phone call to Casey to see if Casey would accept Spartin's call. In a memorandum reporting to Moore on the status of REI's OCR efforts, Reedy remarked: "I don't have to tell you how fragile the situation is. I think you got some sense of this from talking to Spartin; however, I think the basic tactics are correct, the economics are on our side and we have chosen well, so let's see where it goes." We also learned that April 8, 1986, after the interview in which he lied to Inspectors about how he obtained Gnau's name, Reedy placed a phone call to Spartin.

13. Gnau, Marcus and Spartin all implicated Moore and Reedy in discussions of cover stories and file purges. REI claimed it was unable to locate records in response to subpoenas. Moore's telephone log for the period October 19, 1984 to January 15, 1955 (identified as Log No. 4) was never turned over to the grand jury. Telephone toll records for Moore for January, February, April, November and December 1984 and January 3 and 4, 1985 never were turned over to the grand jury. Reedy's telephone toll records for January, February, April, May and December, 1984 and January, March and April 1985 never were turned over. Moore's "Pos-

tal" Notebook was turned over to the grand jury, but was missing almost half its 80 pages, with no apparent explanation. REI's failure to produce these documents made examination of events during the periods of time for which records were not produced more difficult, and in my mind was additional evidence tending to support the conclusion that Moore, Reedy and REI knowingly participated in the conspiracy and were trying to hide that.

14. One of Moore's chronological notebooks contained the following entry for January 7, 1987:

"A lot of homework; drive a wedge between people",

"(intimidate)",

"Answer I don't know, I really can't remember",

"Excitable",

"All kinds of scenarios",

"Ask same questions over and over",

"Don't relax" "Long interrogation, tough questions at end)",

"Possible subpoena".

REI employees subsequently testified to the grand jury that Moore made comments to this effect in a staff meeting that day. I became aware that prior to January 27, 1987, Inspector Hartman had made arrangements with REI's general counsel for us to come to REI the following week to interview REI employees. In light of the evidence that we received that Moore and Reedy had discussed cover stories and file purges, the missing REI records described above and Moore's comments to his staff greatly concerned me.

15. Assistant United States Attorney ("AUSA") Joseph Valder made the decision to prepare summary statements to be read into evidence before the grand jury. As I understood Mr. Valder's practice, the witness would be present when the statement was read to the grand jury and would be asked if the statement had been read correctly and if it was true. I understood that Mr. Valder had used this practice in other cases in the past. This practice was not used for the purpose of falsely implicating Moore.

16. Witness William Spartin was not "coerced or intimidated." We did not do anything in respect of Mr. Spartin to influence him to give false testimony implicating Moore. A copy of Mr. Spartin's immunity statement was not torn up because he refused to implicate Moore. Between April, 1986, when he obtained a non-prosecution agreement from the United States Attorney, and October, 1986, Mr. Spartin had been extensively debriefed by Inspectors, including me. We concluded that Mr. Spartin was not being fully truthful in several areas. I have reviewed the documents attached hereto as Exhibits 2 and 3. I recognize them to be handwritten and typed copies of a document from the Inspection Service case file that were prepared to document Mr. Spartin's lack of candor. These documents set forth the areas in which we had concluded that Mr. Spartin was not fully forthcoming in our debriefings. My belief, based on my discussions with Mr. Spartin and observations of him, was that he wished to continue with his business career and was unwilling to fully implicate himself in the events we were investigating. I felt that because he was unwilling to acknowledge the full extent of his own participation in the events we were investigating that he was not

living up to the terms of his cooperation agreement with the United States by giving complete and truthful disclosure of what he knew.

17. We related our concerns about Mr. Spartin to the United States Attorney's Office, where it was decided that a meeting with Spartin and his attorney, Brian Gettings, was in order. Mr. Spartin and Mr. Gettings were invited to a meeting at the United States Attorney's Office. We met in a conference room. At that meeting, Mr. Valder tore in half a copy of Spartin's non-prosecution agreement. My understanding, then and now, is that Mr. Valder took this action for the purpose of underscoring to Mr. Spartin and Mr. Gettings the seriousness of the government's concern about Mr. Spartin's lack of candor and that his immunity was in jeopardy. It never was my understanding or purpose that this action be taken to influence Mr. Spartin to implicate Mr. Moore. The meeting was conducted in a professional manner sitting around a conference room table. No one from the government side raised their voice or behaved in a manner physically intimidating to Mr. Spartin, who was accompanied at all times by his attorney, Mr. Gettings. As we reviewed the areas in which we believed that Mr. Spartin had not been candid, Mr. Spartin interjected from time to time expressing his concern and agitation that we did not believe him. When that happened, Mr. Gettings would calmly advise Mr. Spartin to wait, let us have our say, and then he and Mr. Spartin would respond.

18. Mr. Gettings informed us that his client had trouble remembering events clearly and also had engaged in a process that Mr. Gettings referred to as "backing and filling." Mr. Gettings explained that by this he meant that Mr. Spartin would describe an event

only in general terms—"hitting the highlights," he explained—and would go back and fill in details only if he realized that we wanted those details. My perception, based on our interviews with Mr. Spartin, was that he omitted many potentially important details when interviewed and that he provided those details, usually in a later interview, only when he realized that we already had learned them and he had little choice but to acknowledge them. Mr. Spartin's technique of "backing and filling," as Mr. Gettings described it, is the reason that numerous interviews with Spartin were required to obtain full and complete information from him. Mr. Spartin was not interviewed on multiple occasions because we were trying to force him to falsely implicate Moore.

19. As a result of our meeting with Mr. Spartin and Mr. Gettings, Mr. Gettings asked for the opportunity to try to refresh his client's recollection so that Mr. Spartin could make a more full and complete disclosure of all that he knew. Mr. Valder agreed and also agreed to provide Mr. Gettings certain materials to use for this purpose.

20. A copy of Mr. Spartin's non-prosecution agreement was torn up for the reasons explained above. It was not torn up in the October, 1986 meeting because of anything Mr. Spartin said in a polygraph examination. Mr. Spartin underwent the only polygraph examination administered to him by the Inspection Service in December, 1986, after the meeting at which the non-prosecution agreement was torn up. By that time, Mr. Gettings and Mr. Spartin claimed to us that Mr. Spartin had recovered his memory. The polygraph was administered by Inspector Norman Robbins, who had no other role in our investigation. The result of that

examination was that Spartin was determined not to be deceptive in his claims that he had not told Moore of the kickback scheme and that he was not present when anyone else told Moore. We accepted that.

21. We did not threaten to prosecute Spartin's son in order to force Spartin to falsely implicate Moore. In April, 1986, when William Spartin had agreed to cooperate, his attorney, Mr. Gettings, had assured us that William Spartin would in fact fully cooperate and that there was no need for us to go back and interview Mr. Spartin's son. Mr. Gettings explained that one of the reasons that William Spartin agreed to cooperate was out of a desire to shield his son from further scrutiny and concern over his son's involvement in the events under investigation. We had evidence that Spartin's son was implicated in the conspiracy and contradicted his father in respect of several of the areas of misrepresentation described in Exhibits 2 and 3, however. For example, we knew that David Spartin had signed his father's name to a back-dated letter resigning the presidency of GAI. We made that known to Mr. Spartin and Mr. Gettings and also made known that if Mr. Spartin was not going to fully disclose all that he knew as he had promised we were prepared to pursue his son's knowledge of the matters under investigation. I do not recall anyone "threatening" to prosecute David Spartin, but there was a frank discussion of David Spartin's role and the fact that we were prepared to obtain evidence from David Spartin if necessary and pursue that evidence as appropriate. From the context of the discussion, Mr. Gettings and Mr. Spartin might have recognized the possibility that David Spartin could be prosecuted as the result of our futher scrunity, and that was one of the things Mr.

Gettings told us William Spartin hoped to avoid in entering the cooperation agreement. No one from the the Government made any "threat" to prosecute David Spartin, however. We certainly did not threaten to prosecute David Spartin in order to force William Spartin to falsely implicate Mr. Moore.

22. Inspector Hartman and I did not give former Postmaster General Paul Carlin, a copy of a draft indictment to review. In late September 1988, AUSA Valder asked inspector Hartman and I to verify certain facts in a draft indictment that had been prepared. We interviewed Mr. Carlin at his home on September 20, 1988. A true copy of the draft that we had with us at the time of Mr. Carlin's interview is attached as Exhibit 4 hereto. In the margins next to certain text is the notation "OK" in my handwriting. That notation reflects our conclusion that the passage accurately describes the events therein. We did not show the document to Mr. Carlin. We did not identify the document to Mr. Carlin. We did not tell Mr. Carlin that it was a draft indictment. We did not tell Mr. Carlin that any indictment was being considered. We interviewed him, verified the accuracy of the factual matters in question and departed.

I hereby declare that the foregoing is in true and correct.

Executed on 7/29/2001

/s/ FRANK W. KORMANN
FRANK W. KORMANN

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civ. No. 92cv2288 (NHJ) (AK)
(consolidated with Civ. No. 93cv0324 (NHJ) (AK))

WILLIAM G. MOORE, JR., PLAINTIFF

v.

JOSEPH B. VALDER, ET AL., DEFENDANTS

DECLARATION OF PIERCE B. McINTOSH

I, Pierce B. McIntosh, declare under penalty of perjury, the following:

1. I have personal knowledge of the following facts, and, if called as a witness, could competently testify thereto.

2. I was an employee of the United States Postal Service from 1962 until my retirement in 1996. I was appointed as a Postal Inspector with the United States Postal Inspection Service on November 29, 1969, and served in that capacity until my retirement. In November 1985, I was assigned by Chief Postal Inspector Charles Clauson to work on a Task Force that had been established to investigate the procurement of optical character readers used by the Postal Service to read, code and sort letter mail.

3. My official assignment to the Task Force ended in January 1987, although I was called back to assist in the investigation by listening to tapes of Board of Governors meetings and obtaining transcripts of those

meetings. I also participated in an interview of William Spartin on August 4, 1987.

4. One question we were pursuing in the investigation was whether there had been any criminal conduct associated with the removal from office, one year after his appointment, of former Postmaster General Paul Carlin. Mr. Carlin was removed as Postmaster General in January 1986, although he continued to be employed by the Postal Service until January 1987. Mr. Carlin was interviewed on several occasions by other Postal Inspectors working on the investigation. I did not participate in any of those interviews. I did, however, deliver some documents to Mr. Carlin on June 9, 1986. At that time, Mr. Carlin was no longer the Postmaster General but was still employed by the Postal Service as Special Assistant to the Postmaster General. Mr. Carlin asked for copies of five documents that were included in a collection of documents known as the "multi-line history." The multi-line history consisted of documents that were significant to the procurement of automated mail processing equipment. It had been compiled by a member of Postal management at the direction of Mr. Carlin while he was still serving as Postmaster General. Although the history was not prepared for the purpose of assisting the investigation, we did obtain and use copies of the documents collected.

5. My notes made on June 9, 1986, at a time when Mr. Carlin's request was fresh in my mind, a true and correct copy of which is attached to my declaration as Exhibit 1, identify the documents delivered by the following numbers: 175, 200, 240, 244 and 341. I have reviewed an index to the multi-line history and those numbers correspond to the following documents listed on that index: No. 175 is a memorandum from James

Jellison to Carlin dated January 31, 1985, a true and correct copy of which is attached to this declaration as Exhibit 2; No. 200 is a memorandum by David Harris dated March 13, 1985 a true ,and correct copy of which is attached as Exhibit 3; No. 240 is memorandum from the Technology and Development Committee of the Postal Service Board of Governors to the full Board of Governors, dated May 5, 1985, a true and correct copy of which is attached as Exhibit 4; No. 244 is a memorandum from Jackie Strange to the Technology and Development Committee dated May 9, 1985 a true and correct copy of which is attached as Exhibit 5; and No. 341 is a memorandum from Mrs. Strange to Mr. Carlin dated June 14, 1985, a true and correct copy of which is attached as Exhibit 6.

6. On October 24, 1986, I was present during a meeting between Assistant United States Attorney (AUSA) Joseph Valder and William Spartin at which a copy of Spartin's nonprosecution agreement was torn into two pieces by AUSA Valder. Postal Inspectors Michael Hartman, Frank Kormann and Robert Edwards, along with Spartin's attorney, Brian Gettings, may also have attended the meeting, but my recollection is not clear on that point. I believe that Mr. Valder discussed with me and other Postal Inspectors in advance of that meeting his intention to make a show of tearing a copy of the agreement to emphasize to Mr. Spartin the necessity of his truthful cooperation with the investigation. I knew that Mr. Spartin was obligated by his nonprosecution agreement to cooperate in the investigation and to provide truthful information. As the investigation proceeded, it became apparent to me that Mr. Spartin was not honoring the terms of his agreement. Instead of providing complete information,

he was back-pedaling on information he had previously proffered and his level of cooperation was dwindling. During questioning by AUSA Valder during the October 24, 1986, interview, Spartin again appeared to be withholding information and to be providing untruthful information. At some point, Mr. Valder tore the copy of the nonprosecution agreement and said words to the effect that if Spartin did not cooperate with the government his nonprosecution agreement would be rescinded.

7. While I was working on the criminal investigation, Chief Inspector Clausen asked me to assist in preparing a report for the House of Representatives Committee on Post Office and Civil Service. The members of that Committee had requested that the Postal Service provide a comprehensive written report of the Inspection Service's findings on all non-criminal matters relating to the "Zip + 4" program, the purchase of OCRs, and the process by which the expenses of the Board of Governors were processed and audited. In accordance with Chief Inspector Clausen's direction, I assisted in the preparation of what came to be called the "Zip + 4 / Automation Investigative Report," the final version of which was provided to Congress in January 1987. I was not responsible for the first draft of any particular section of the report, but instead was involved in editing the work of other drafters and assembling the various parts of the report. The Zip + 4 / Automation Investigative Report was prepared solely for the purpose of responding to the request by the House Committee on Post Office and Civil Service for such a report.

8. On December 9, 1986, I received a telephone call from Paul Carlin. I no longer have a recollection of that

call, but I do recall that I made notes regarding the conversation at a time when it was still fresh in my mind. A true and correct copy of the notes I made is attached to this declaration as Exhibit 7. Those notes reflect that Mr. Carlin asked for the results of interviews conducted of Ms. Strange, John McKean and Albert Casey and for the results of a laboratory examination. As is explained in my memorandum for Judge George H. Revercomb, prepared on October 27, 1989, while I still had a specific recollection of my conversation with Mr. Carlin, the interviews and laboratory examination concerned the authenticity of a document purportedly authored by Mrs. Strange, specifically, a document dated March 5, 1985, entitled "Memorandum for the Record." A true and correct copy of my October 27, 1987 memorandum for Judge Revercomb is attached as Exhibit 8. The March 5, 1985, memorandum discussed an order by member of the Board of Governors Ruth Peters to freeze the program to retrofit single-line OCRS to multi-line capability. Mr. Carlin, whose actions were referred to in that document, was interviewed by the Postal Inspection Service about it, as was Mr. Casey, who had been given a copy, Mr. McKean, who was then Chairman of the Board of Governors, and Mrs. Strange herself. The concern over the document arose from a handwritten note by Mrs. Strange that appeared on one copy but not on other copies. A laboratory analysis was conducted in order to determine whether the original copy and the copy with handwritten annotations were prepared contemporaneously or if one was prepared subsequent to the other. That analysis showed that there was no evidence to support a conclusion that the documents were not prepared contemporaneously on March 5, 1985.

9. As is reflected in Exhibit 7, I did not reveal the specific content of any witness interviews to Mr. Carlin. I was not present during any of those interviews. The inquiry concerning the March 5, 1985 memorandum was not part of any grand jury investigation. Instead, it was an investigation being conducted by the Postal Inspection Service only, independent of any grand jury proceeding. I conveyed the information to Mr. Carlin because I thought that if he knew that there was no evidence of foul play with respect to the memorandum, it might expedite the disposition of a lawsuit I knew he had brought against the Postal Service arising out of his termination as Postmaster General. My recollection is that Mr. Moore was not a party to that lawsuit.

10. My purpose in taking all of the actions I did during the Task Force investigation was not to retaliate against anyone because of their protected First Amendment activity, but rather to gather all of the information I could about the events surrounding the procurement. I tried to obtain as much information as possible about the actions, statements and motives of those individuals involved in that procurement, so that it would be possible to determine whether there was probable cause to believe a crime had been or was being committed by anyone, including William Moore. However, I was not assigned to the Task Force at the time of and I did not participate in any way in the recommendation I understand was later made by the Inspection Service that the United States Attorney should seek the indictment of Mr. Moore.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ PIERCE MCINTOSH
PIERCE B. MCINTOSH

Dated: JUL 26 2001

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

No. 92cv2288 (NHJ) (AK)
(consolidated with No. 93cv0324 (NHJ) (AK))

WILLIAM G. MOORE, JR., PLAINTIFF

v.

MICHAEL HARTMAN, ET AL, DEFENDANTS

No. 93cv0324 (NHJ) (AK)
(consolidated)

WILLIAM G. MOORE, JR., PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

UNDER SEAL

PLAINTIFF'S STATEMENT OF MATERIAL FACTS AS TO WHICH THERE EXISTS A GENUINE ISSUE NECESSARY FOR TRIAL

Pursuant to District of Columbia Local Civil Rule 7.1(h), Plaintiff William G. Moore, Jr. ("Moore") submits the following Response to the Defendant Postal Inspectors' Statement of Material Facts Not Genuinely in Dispute.

A. Response to Defendant Postal Inspectors' Statement of Material Facts Not Genuinely In Dispute.

1. Not contested.

2. Contested as to completeness. The Inspectors initiated an investigation into alleged threats by Peter Voss against Jackie Strange with respect to the procurement of multi-line OCRs. The Inspectors' initial interview of Jackie Strange occurred on July 25, 1985 and was purportedly prompted by remarks made by Ms. Strange on July 18 to then-Chief Postal Inspector Clauson regarding what she perceived as irregularities by members of the Board of Governors ("BOG") in the procurement process. Ms. Strange reported to the inspectors that it was her belief that Voss was operating "in a business sense and did not intend any wrongdoing." Ex. 1, SMFC4 10244-45, 7/18/85 Clauson Memorandum re: Jackie Strange interview; Ex. 2, SMFC4 10246-50, 7/25/85 Jackie Strange Interview Memorandum at SMFC4 10246.

3. Contested as to completeness. Ms. Strange eventually reported to the Inspectors that it was her belief that Voss was operating "in a business sense and did not intend any wrongdoing." Ex. 2, SMFC4 10246-50, 7/25/85 Jackie Strange Interview Memorandum at SMFC4 10246.

4. Not contested.

5. Contested as to characterization, accuracy and completeness. During the Fall of 1985, there was considerable controversy within postal management, the USPS BOG, and Congress as to whether the USPS should procure multi-line or single-line OCR equipment. Ex. 3, 003550-51, Statement by Congressman Leland; Ex. 4, SMFC1 07802-06, 4/15/85 BOG Meeting Transcript (hereinafter "Tr.") and Ex. 5, SMFC1 11838-53, 9/30/85 BOG Meeting Tr. (discussing single-line versus multi-line approach); Ex. 6, WM 004961-64, 7/09/85 Public statement of R. Peters re: Zip+4 program; Ex.

7, WM 04092-31, 7/17/85 R. Peters letter to PMG Carlin. During this time period, the UPS implemented a Phase IIA retrofit competition in which the SLOCRs that had been previously installed would be converted to MLOCRs. Ex. 8, WM 037778-79, Minutes of 7/12/85 USPS meeting re: mid-course correction. In order for REI to compete in the Phase IIA retrofit competition, REI needed information from AEG/ECA—its primary competitor who had been awarded the Phase I SLOCR contract—but AEG/ECA refused to provide such information to REI. In addition, postal service management refused to intervene on REI's behalf to collect and provide tlhe information that REI needed to complete. Ex. 9, Correspondence between REI and ECA/AEG and USPS (various Bates No. ranges). Instead, the USPS directed REI to meet with AEG in an effort to cooperatively work out the details of the information that REI needed. Ex. 10, SMFC4 10451-60, Hartman's notes of 12/23/85 interview, with William Chapp, APMG at SMFC4 10457 ("Chapp has asked French to get AEG and REI to together on technical cooperation"). During that meeting, Moore commented that if he were the Postmaster General, he would give the Phase IIA conversion program to ECA and the Phase III multi-line contract to REI. Ex. 11, SMFC4 10271-75, 11/07/85 Leopold Diecke Interview Memorandum at SMFC4 10272; Ex. 12, SMFC4 10257-60, Inspectors' translation (German English) of Kurt Scheidhauer's 10/17/85 notes of AEG/REI meeting at SMFC4 10260; Ex. 13, SMFC3 00192-210, 11/20/85 Moore Interview Memorandum (and Inspectors' notes) at SMFC4 00196-97. This is the same thing that Moore had previously told postal service management and the BOG. Ex. 14, 5-3742, Minutes of 10/09/85 meeting between postal management and Moore ("Mr. Chapp asked Moore what action he would

take if he were in the USPS position"); Ex. 15, WM 065444, 07/06/84 Moore letter to Bolger. Significantly, Governor Ruth Peters and others within the USPS had previously proposed that there be a split contract between REI and ECA for the procurement of MLOCRs and the retrofit of existing SLOCRs. Ex. 16, V4 M 01331, 10/09/85 Ray Morgan Memorandum ("R. Peters met with PC [Paul Carlin] and J. Lee on 10-8. . . . R. Peters asked if USPS can split up the OCR contracts"); Ex. 17, WM 070022-24, Statement of Technology Committee at WM 070024; Ex. 18, SMB4 01733, Moore's note: dated 3/29/86 ("Camp, Voss, Peters says [sic] they will split the business") (transcribed by Inspectors); Ex. 19, SMFC4 00202-39, Investigative Task Force's "Investigative Strategies" memo at SMFC4 00212; Ex. 20, Clauson Deposition (hereafter "Dep.") at 116-18, 123-24; Ex. 21. Edwards Dep. at 216-19. 460-61; Ex. 22, McIntosh Dep. at 260-61. Moreover, the Office of Technology Assessment had concluded in 1984 that a dual track purchase of multiline and single-line retrofits (*i.e.*, "90/10 split") was the most appropriate course of action in automating the postal service Ex. 23,002653-778, 1984 OTA Report at 002664. While Moore does not dispute that AEG Telefunken—a competitor of REI—may have purposefully twisted Moore's comments in order to fabricate a story regarding deal splitting to place a cloud of suspicion over REI, no such offer was ever made and the Inspectors were unable to establish that Moore ever made such an offer to AEG. Ex. 13, SMFC4 00192-210, 11/20/85 Moore Interview Memorandum at SFMC4 00196-98; Ex. 21, Edwards Dep. at 438, 496; Ex. 24, Hartman 5/07/98 Dep. at 160-61.

6. Not contested.

7. Contested as to accuracy and completeness. Inspectors learned that then Postmaster General Bolger had approved the purchase of single-line OCRs on July 10, 1984 and insisted that the contract be signed that same day. Ex. 25, SMFC4 10492-98, 1/07/86 Simmons Interview Memorandum at SMFC4 10492-93. The Inspectors also were aware that there was a tremendous amount of animosity between Bolger and the BOG on this issue and that, according to USPS's head contracting officer, John Simmons, Bolger wanted to "ramrod the contract through" to ECA as his last "dig" at the BOG. *Id.* Additionally, it was not the USPS's plan to wait until 1987 to implement multi-line technology. Instead, the decision of management in 1984 was to see if the volume of Zip+4 usage increased to sufficient levels to justify the use of SLOCRs, and if sufficient usage levels were not achieved, to then implement a fallback position of MLOCRs. Ex. 26, Trial Transcript (hereafter "Trial Tr.") at 2192-93. The USPS decision to purchase single-line OCRs was premised on flawed and erroneous information regarding the purported success of the Zip+4 program which was purposefully overstated by certain USPS management to discourage the shift to MLOCRs. Ex. 27, WM 001592-93, 5/09/85 Congressman Glen English letter to PMG Carlin. Members of Congress and the BOG also were expressing frustration that postal management appeared to he purposefully delaying implementation of multi-line. Ex.28, SMFC3 01201-08; WM 003965-72, 11/01/85 Memorandum from Ruth Peters to BOG. Moreover, the failure to move from single-line to multi-line technology was costing the USPS over $1 million each day in operational losses. *United States v. Recognition Equip., Inc.*, 725 F. Supp. 587, 590 (D.D.C. 1989).

8. Contested as to completeness. Postmaster General Carlin officially made his decision to move to a multi-line OCR environment on July 12, 1985, when he announced the mid-course correction. Ex. 8, WM 037778-79, Minutes of 7/12/85 Meeting re: mid-course corrections; Ex. 29, SMFC1 19097-100, 7/14/85 Memorandum from PMG Carlin to BOG. Further, Carlin promised that USPS management would "move expeditiously" to multi-line. Ex. 30, WM 038757-63, 11/19/85 Carlin letter to R. Peters at WM 038 757. The failure to implement multi-line technology was costing the USPS in excess of $1 million per day in operational losses. Ex. 31, SMFC4 10335-43, 12/03/85 Voss Memorandum Interview at SMFC4 10341; *Recognition Equip.*, 725 F. Supp. at 590.

9. Not contested.

10. Not contested.

11. Not contested.

12. Not contested.

13. Not contested.

14 Contested as to characterization and completeness. At the recommendation and direction of Assistant Postmaster General William Chapp, REI and AEG met in the Fall of 1985 to discuss the technical information that REI needed to compete in the Phase IIA retrofit conversion program. Ex. 24, Hartman 4/20/00 Dep. at 26-28; Ex. 21, Edwards Dep. at 161; Ex. 10, SMFC4 10451-60, Hartman's notes of 12/23/85 Chapp interview at SMFC4 10457; Ex. 32, SMFC3 0978 1-84, 11/19/85 Bray Interview Memorandum at SMFC3 09781-82.

15. Contested as to accuracy and completeness. During his meeting with AEG in the Fall of 1985, Moore never offered to split any contract with AEG. Instead, he commented that if he were the Postmaster General, he would give the Phase IIA conversion program to ECA and the Phase III multi-line contract to REI. Ex. 11, SWC4 10271-75, 11/07/85 Leopold Diecke Interview Memorandum at SMFC4 10272; Ex. 12, SMFC4 10257-60, Inspectors' translation (German /English) of Kurt Scheidhauer's 10/17/85 notes of AEG/REI meeting; Ex. 13, SMFC3 0015 2-210, 11/20/85 Moore Interview Memorandum at SMFC3 00196-97. This is the same thing that Moore had previously told postal service management and the BOG. Ex. 14, 5-3742, Minutes of 10/09/85 meeting between postal management and Moore; Ex. 15, WM 065444, 7/06/84 Moore letter to Bolger. Significantly, Governor Ruth Peters and others within the USPS had previously proposed that there be a split contract between REI and ECA for the procurement of MLOCRs and the retrofit of existing SLOCR's, and the Inspectors were aware that the BOG had numerous meetings where the topic of sphitting the contract was discussed and that certain BOG members favored this approach. Ex. 16, WM 01331, 10/09/85 Ray Morgan Memorandum ("R. Peters met with PC [Paul Carlin] and J. Lee on 10-8 . . . R. Peters asked if USPS can split up the OCR contracts"); Ex. 17, WM 070022-24, Statement of Technology Committee at WM 070024; Ex. 18, SMB4 01733, Moore notes dated 3/29/86 (transcribed by Inspector); Ex. 19, SMFC4 00202-39, Investigation Task Force's "Investigative a Strategies" memo at SMFC4 00212; Ex. 21, Edwards Dep. at 460-61; Ex. 22, McIntosh Dep. at 260-61; Ex. 20, Clauson Dep. at 116-18, 123-24. Moreover, the Office of Technology Assessment had

concluded in 1984 that a dual track purchase of multi-line and single-line retrofits was the most appropriate course of action in automating the postal service. Ex. 23, 002653-778, 1984 OTA Report at 002664. While Moore does not dispute that AEG Telefunken—a competitor of REI—may have purposefully twisted Moore's comments in order to fabricate a story regarding deal splitting to place a cloud of suspicion over REI, no such offer was ever made, and the Inspectors were unable to establish that Moore ever made such an offer to AEG. Ex. 13, SMFC3 00192-210 11/20/85 Moore Interview Memorandum at SMFC4 00196-97; Ex. 21, Edwards Dep. at 438, 496; Ex. 24, Hartman 5/07/98 Dep. at 160-61. Nor did Moore ever threaten to use his political clout to kill the retrofit program if AEG did not go along with his proposal. Ex. 13, SMFC3 00192-210, 11/20/85 Moore Interview Memorandum at SMFC3 00196-97. AEG, on the other hand, told the Inspectors in November 1985 that if REI "dropped out" of the competition, that AEG would offer additional licenses to make the procurement competitive. Ex. 21, Edwards Dep. at 234-35.

After the USPS directed REI and AEG to meet to discuss sharing the technical information, the Inspectors requested that the Department of Justice convene a grand jury to indict REI (and Moore) for alleged antitrust violations. However, the Inspectors' request was declined due to insufficient evidence. Ex. 33, SMFC4 00507, Inspectors' notes ("Main Justice antitrust declines request for grand jury [in November 1985]").

16. Not contested, but for completeness, the "German businessmen" who were interviewed were Scheidhauer and Diecke. Ex. 34, SMFC4 10262-69,

11/06/85 and SMFC4 10384-86, 12/06/85 Scheidhauer Interview Memoranda; Ex. 11, SMFC4 10271-75, 11/07/85 Diecke Interview Memorandum.

17. Contested. According to Inspector Edwards' memorandum to Clauson, Edwards and Hartman met with Hardy and Carver on November 8, 1985. Inspectors' Br., Ex. D at Exhibit 1. This meeting was approximately two weeks before Moore and Reedy were interviewed on November 20 1985. Moore has no knowledge or information regarding the meeting between the Inspectors, Hardy and Carver, and therefore, he has no basis to contest Defendants' assertions that such a meeting in fact occurred.

18. Moore has no knowledge or information concerning what may or may not have been said during the meeting between the Inspectors, Hardy and Carver, and therefore, Moore has no basis to contest the assertions as to what transpired during any such meeting.

19. Moore was no knowledge or information concerning what may or may not have been said during the meeting between the Inspectors, Hardy and Carver, and therefore, Moore has no basis to contest the assertions as to what transpired during any such meeting.

20. Moore was no knowledge or information concerning what may or may not have been said during the meeting between the Inspectors, Hardy and Carver, and therefore, Moore has no basis to contest he assertions as to what transpired during any such meeting.

21. Not contested.

22. Contested. While the memorandum indicates in very general terms the proposed direction of further investigation by the Inspectors, it does not outline the nature and scope of the investigation that subsequently followed, which was far more expansive in nature and scope and included probe into Moore's constitutionally protected communications with members of Congress and the media, as well as political fundraising activities. *See, e.g.*, Ex. 19, SMFC4 00202-39, Investigative Task Force's "Investigative Strategies" memo at SMFC4 00216, 00233, and 00235; Ex. 35, SMFC4 00004-147, "Details of Offense;" Ex. 36, SMFC3 09861-64. "Arguments for Indicting the Corporation."

23. Contested as to accuracy and completeness. Moore does not contest that the Inspectors learned that Voss was engaged in a travel voucher scheme that defrauded the government of over $44,000, but there was no evidence that Moore was aware of or participated in any such scheme. Moreover, the grand jury investigation revealed that the check payments that were made from Gnau to Voss were actually made to "Decision Systems, Inc."—and not to Voss personally —in an effort to keep the payments secret and not reveal that they were actually kickbacks to Voss for various work that was referred to Gnau. *Recognition Equip.*, 725 F. Supp. at 590; Ex. 26, Trial Tr. at 621-22, 844-47; Ex. 37, USA-001-0010-12, 4/15/84 Agreement between Gnau and Decision Systems, Inc.; Ex. 38, 2-5688-89, 9/84 Memo from Decision Systems, Inc. to Gnau; Ex. 39, DOJ23 001681-702 and DOJ29 000469-490, Grand Jury "Statement of John R. Gnau, Jr." (hereafter "Gnau Statement") at DOJ23 001684. Additionally, none of the conspirators involved in the kickback scheme ever told Moore or anyone else at REI that any

payments (either in the form of cash, checks, or airline tickets) were being made to Voss, and Moore never had any knowledge of any such payments. Ex. 40, William Moore Affidavit (hereafter "Aff."). ¶ 23; Ex. 21, Edwards Dep. at 119-20, 526; Ex. 24, Hartman 5/07/98 Dep. at 132, 134-36, 249; Ex. 41, Kormann Dep. at 132-36, 507-08, 576, 580; 590-607; Ex. 22, McIntosh Dep. at 185-86.

24. Not contested.

25. Contested as to accuracy and completeness. Moore does not dispute that the Inspectors learned during their investigation that Gnau was paying, kickbacks of money to Voss for business referrals, including the referral of REI to Gnau. Nor does Moore dispute that the Inspectors learned that Spartin was bribing Voss with airline tickets and that Voss assisted Spartin in obtaining a recruiting contract to search for a new postmaster general to replace Paul Carlin. However, the investigation revealed that the payments that were made from Gnau to Voss were actually made to "Decision Systems, Inc." In an effort to keep the payments secret and conceal that they were actually kickbacks to Voss for various work that was referred to Gnau. *Recognition Equip.*, 725 F. Supp. at 590; Ex. 26, Trial Tr. at 621-22, 844-47; Ex. 37, USA-001 0010-12, 4/15184 Agreement between Gnau and Decision Systems, Etc., Ex. 39, DOJ23 001681 702, Gnau Statement at DOJ2 3 001684. Moreover, none of the conspirators involved in the kickback scheme ever told Moore or anyone else at REI that any payments (either in the form of cash, checks, or airline tickets) were being made to Voss, and Moore never had any knowledge of any such payments. Ex. 40; Moore Aff. ¶ 23; Ex. 21, Edwards Dep. at. 119-20, 526; Ex. 24, Bartman 5/07/98 Dep. at 132, 34-36, 249;

Ex. 41, Kormann Dep. at 132-36, 507-08, 576, 580; 590-607; Ex. 22, McIntosh Dep. at 185-86. In fact, not only did the contract between REI and GAI forbid any illegal activity on the part of GAI, but when Moore confronted Gnau after Voss pled guilty in the Spring of 1986i, Gnau repeatedly denied that he was involved in any wrongdoing and/or that any payments had been made to Voss. Ex. 42, DIOJ38 00039-43, USA 028-0036-40, 2/85 REI/GAI Consulting Agreement at X10; Ex. 35, SMFC4 00004-147, "Details of Offense" at SMFC4 000123 ("Gnau replied that he loaned Voss money due to Voss' financial problems resulting from Voss' divorce"); Ex. 43, SMFC4 09889-910, 5/09/86 Voss Interview Memorandum at SMFC4 09910. With respect to Spartin's conduct, there was no evidence developed during the investigation that Moore was aware of or participated in Spartin's airline Picket scheme with Voss. In this regard, Spartin even concealed from Marcus that he was paying Voss in airline tickets. Ex. 44, SMFC4 0974-97, 8/5-6/86 Marcus Interview Memorandum at SMFC4 10981, ¶ 2. Moreover, Spartin's executive recruiting contracts for the USPS received approval by the Board of Governors, including BOG Chairman John McKean. *Recognition Equip.*, 725 F. Supp. at 590; Ex. 45, SMFC4 10524-35, 3/18/86 John McKean Interview Memorandum at SMFC4 10526; Ex. 46, SMFC4 10735-38, 5/06/86 McKean Interview Memorandum at SMFC4 10737.

26. Contested as to completeness. During their investigation, the Inspectors were told by Voss that the dinner with Reedy was Voss's suggestion in order to apologize for the fact that the BOG Technology Committee had canceled at the last minute its scheduled visit to Dallas to tour REI's facility. Ex. 47, DOJ4

001389-1400, 3/09-11/88 Voss Interview Memorandum at DOJ4 0001390; Ex. 48, 2-5499, 8/20/84 Reedy letter to Voss. During the meeting, Voss told Reedy that he believed REI had a good product and that, in the interests of the USPS, he wished that REI would retain someone to aid them in packaging and presenting their product to the USPS. *Recognition Equip.*, 725 F. Supp. at 590.

27. Contested as to completeness. During their investigation, the Inspectors were told by Voss that, in response to Reedy's question to Voss about how REI could most effectively make a presentation to the BOG, Voss told Reedy that he (Voss) was capable of making the proper presentation, but could not do so because he was a member of the BOG. Voss also told the Inspectors that he informed Reedy during this same dinner that "[he] felt it would be inappropriate to make such a presentation on behalf of a vendor." According to Voss, Reedy also told Voss that REI was represented by Hill & Knowlton, to which Voss replied that REI needed someone "lower key and less emotional." Although Voss was hesitant to provide Reedy with names of any particular consultant, Voss told the inspectors that he suggested three different entities: GAI , Grey & Company and Nofziger-Bragg, Inc. It was only after Reedy pressed Voss that he indicated GAI. Despite this recommendation, however, REI did not actually retain GAI until many months later, principally because REI saw no need to rush into a new consulting relationship when the political climate at the USPS was uncertain and a new PMG was coming into office in January 1985. *Recognition Equip.*, 725 F. Supp. at 590-91; Ex. 47, DOJ4 001389-400, 3/9-11/88 Voss Interview Memorandum at DOJ4 001390-91; Ex. 49, Moore Dep. at 210-

11; Ex. 41, Kormann Dep. at 789-90, 795-96; Ex. 50, SMFC3 00236-50, 7125/86 Reedy Interview Memorandum at SMFC3 00239-40; Ex. 26, Trial Tr. at 1185, 1618-19. See also infra ¶¶ l 15-132, which are incorporated by reference herein as if set forth in full.

28. Not contested. By way of further response, Moore incorporates by reference Paragraphs 115-132, *infra*, as if set forth in full.

29. Contested as to completeness and context. By way of response, Moore incorporates by reference his response to Paragraph 25 as if set forth in full. Moore further incorporates by reference Paragraphs 133-36, *infra*, as if set forth in full.

30. Contested as to completeness and context. The Inspectors were aware that the reason Reedy told them that he learned of Gnau through Bob John Robison was that both Reedy and Tom Loose, REI's general counsel, were suspicious of the Inspectors' motives for requesting information from REI. *Recognition Equip.*, 725 F. Supp. at 595; Ex. 51, SMFC3 00226-29, 4/08/86 Reedy and Loose Interview Memorandum at SMFC3 00228-29. The Inspectors knew that Reedy and Loose were suspicious because (1) on a prior occasion in 1979 the inspection service had frustrated REI's ability to compete in a procurement where it had subpoenaed REI's records and then later returned the records without comment or action; and (2) Inspector Edwards had earlier in the day engaged in a "heavy-handed" treatment of Frank Bray by raising his voice and telling Bray, among other things, that people would be going to jail and that Bray should "get on the bus" before it left the station. Ex. 26, Trial Tr. at 3346, 3348-53, 3363; Ex. 51, SMFC3 00226-29, 04/08/86 Reedy/Loose Interview Memorandum at SMFC3 00222, 00226, 00228-29.

In fact, Inspector Edwards understood that Reedy and Loose were charging that "this current investigation was . . . a contrivance to set up because REI was on the verge of delivering a machine out in Phoenix to be tested. . . . So there was a feeling that we were there, in some way to preclude REI from competing." *Id.* at 00229; Ex. 26, Trial Tr. at 3352, 3364-65. Moreover, Inspector Harrington, who was second in command at the Inspection Service with 32 years of experience, knew that Edwards' conduct in interviewing Bray was inappropriate and unsuitable. Ex. 26, Trial Tr. at 3446, 3467. By way of further response, Moore incorporates by reference Paragraphs 183-86, *infra*, as if set forth in full.

31. Contested as to completeness and context. Moore does not dispute that Spartin's scripted grand jury statement contains a notation that Reedy allegedly contacted Spartin's office on or about April 8, 1986. There is no indication, however, that Reedy ever spoke to Spartin during any such call. Moreover, Spartin admitted to the Inspectors during the investigation that neither Moore, Reedy nor anyone else at REI ever agreed with Spartin to hide or conceal any facts or information from the Inspectors. Ex. 52, 00223-75, Spartin Polygraph at 00251; Ex. 26, Trial Tr. at 2626-27. By way of further response, Moore incorporates by reference his response to Paragraph 59, *infra*, as if set forth in full.

32. Contested as to context. The Inspectors actually learned this fact from Reedy. In fact, Reedy apologized to the Inspectors and told them during their next interview that he (Reedy) had obtained Gnau's name from Voss. Ex. 26, Trial Tr. at 3366; *Recognition Equip.*, 725 F. Supp. at 595; Ex. 50, SMFC3 00236-50,

7/25/86 Reedy interview Memorandum at SMFC3 00249.

33. Contested as to completeness and context. Reedy actually apologized to the Inspectors and told them during their next interview that he (Reedy) had obtained Gnau's name from Voss. Ex. 26, Tr al Tr. at 3366; *Recognition Equip.*, 725 F. Supp. at 595; Ex. 50, SMFC3 00236-50, 7/25/86 Reedy Interview Memorandum at SMFC3 00249.

34. Contested as to completeness and context. In or about November 1984, several months after Voss had recommended GAI to Reedy, Voss called Moore to encourage REI to stay in the competition for a USPS contract, to inform Moore that he had given Reedy the name of a consultant that could help REI, and to say that he hoped Reedy would follow up on his recommendation. Ex. 49, Moore Dep. at 212-14; Ex. 53, SMFC4 10897-915, 7/25/86 Moore Interview Memorandum at SMFC4 10901; Ex. 54, 005681-82, 12/20/84 Note from Moore to Voss. By way of further response, Moore incorporates by reference Paragraphs 115-132, *infra*, as if set forth in full.

35. Contested as to completeness and context. After his call with Voss in or about November 1984, Moore spoke with Reedy and urged him not to "drop the ball" and to follow up on Voss' recommendation. Ex. 41, Moore Dep. at 212-14; Ex. 53, SMFC4 10897-915, 7/25/86 Moore Interview Memorandum at SMFC4 10901. "Reedy was a strong executive in many ways, but he wasn't a particularly good administrative guy on occasion. So [Moore] said, 'Look, no matter where we are going with Postal, here's the guy whose the vice-chairman of the board, he has given you a name, you said you would follow up, I expect you to do that. . . .

Give the man the courtesy of following up as you said you would.'" Ex. 41, Moore Dep. at 214. REI, however, was not concerned about moving too quickly to hire any additional consultants in light of the then-existing political climate in Washington and the appointment of Paul Carlin as the new postmaster general effective as of January 1985. *Recognition Equip.*, 725 F. Supp. at 591; Ex. 26, Trial Tr. at 1185, 1618-19; Ex. 50, SMFC3 00236-50, 7/25/86 Reedy Interview Memorandum at SMFC3 00240.

36. Contested as to characterization, completeness and materiality. More than 16 of the referenced call lasted approximately two minutes or less, and there is no indication as to whether Voss actually spoke to anyone at REI during those calls or whether the calls were simply secretarial message-taking exchanges. Ex. 35, SMFC4 00004-147, "Details of Offense" at SMFC4 00034, 36-37, 39, 42-43. In addition, for all but a couple of the calls, there was no evidence developed during the investigation as to who spoke to who, what the content of any such conversations may have been, or how long a person may have been on hold before actually talking to another person during any of the referenced conversations.

37. Contested. Nothing in the Inspectors' interview notes with Peterson indicates that she told the Inspectors that Voss made five to ten follow-up telephone calls relating to REI's hiring of GAI. Ex. 55, SMFC3 10120-31, Grand Jury "Statement of Sharon Peterson" (hereafter "Peterson Statement") (summary of Peterson's statements to Inspectors on 5/15, 9/03, and 9/11/86 interviews); Ex. 56, SMFC3 06614-30, 9/19/86 Grand Jury Tr. (Peterson testimony). In addition, there was no evidence that Voss had any recollec-

tion of making such calls, and there was no evidence developed during the investigation as to who spoke to who, when the conversations may have occurred, or what the content or context of any such conversations may have been.

Similarly without merit is the contention in Paragraph 28 of Hartman's affidavit concerning statements allegedly made by Voss during a supposed telephone conversation with Moore in July 1984. During her testimony at trial, Peterson specifically admitted that, while her handwriting is contained on the letter, she had no recollection of the circumstances under which the notes were made or what the notes related to. Ex. 26, Trial Tr. at 834-37.

38. Not contested.

39. Contested as to completeness. REI retained GAI after several months of negotiating the terms of a consulting services agreement. Ex. 49, Moore Dep. at 211-12. In fact, the agreement itself was not finalized until nearly six months after Gnau was initially referred to REI. *Recognition Equip.*, 725 F. Supp. at 590. The Inspectors obtained a copy of the executed agreement during their investigation. Ex. 42, DOJ38 000039-43, USA-028-0036-40, 2/85 REI/GAI consulting agreement. By way of further response, Moore incorporates by reference Paragraphs 115-132, *infra*, as is set forth in full.

40. Contested. The Inspectors were aware from their review of the telephone records that there were several telephone calls purportedly placed between REI and Voss's office after January 1985. See, e.g., Ex. 35, SMFC4 00004-147, "Details of the Offense" at SFMC4 00058, 89, 91. Moreover, given the lack of

evidence developed during the investigation as to what substantive communications may have transpired between REI and Voss either before or after January 1985, there is "no rational basis to reach an inference of any type on the meaning of the [alleged] cessation of contact between Voss and Moore." *Recognition Equip.*, 725 F. Supp. at 594, n.4.

41. Contested as to completeness and accuracy. Moore does not contest the fact that one of the pages in his postal notebook has a notation "Closed Session." See Inspectors' Br., Ex. B at Exhibit 1 (at 005600). There is no indication in the notes, however, from whom the information was received, nor is there any rational basis to conclude that Moore had improperly received any information concerning a closed BOG meeting. Moreover, the Inspectors learned that Moore received BOGC documents and information concerning the procurement process from Congressman Martin Frost's staff member Bonnie Catone, as well as from Congressman English's office. Ex. 57, DOJ47 000604-51, BOG excerpts provided by Bonnie Catone to Moore (with Catone's handwritten note "Bill—Here's the confidential information I discussed wiith you—Bonnie") (excerpts from 3/08/83 open BOG meeting); Ex. 35, SMFC4 00004-147, "Details of Offense" at SMFC4 00006; Ex. 58, USA-015-0252-57, Hartman's notes of 2/09/87 interview of Bonnie Catone at USA-01-0249 and 0255; Ex. 59, USA-015-0258-62, Kormann's notes of 2/09/87 interview with Bonnie Catone at USA-015-0261; Ex. 60, SMFC3 02126-32, Inspectors' Flip Chart at SMFC3 0212'; Ex. 61, SMFC4 07511-15, 5/12/87 Letter from Clauson to Edward Gleiman. There is no evidence that either Moore or anyone else at REI received any BOG documents or information directly from Voss.

Indeed, Voss told the Inspectors that he had provided no information directly to Moore or REI and that he had no knowledge that Marcus gave USPS materials received from Voss or Peterson directly to REI. Ex. 47, DOJ 0013891400, 3/9-11/88 Voss Interview Memorandum at DOJ 001394. Additionally, the Inspectors learned during their investigation that ECA, REI's chief rival, was also receiving inside information relating to, among other things, closed BOG meetings from John Simmons USPS contracting officer—as well as from ECA's own consultants (Nofzinger & Bragg). Ex. 26, Trial Tr. at 2295-321; Ex. 62, SMFC4 02288,11/13/89 Memorandum from BOG Secretary Harris to Clauson regarding "ECA Mole". In this regard, ECA had refused during the investigation to disclose the name of its consultant that was feeding ECA with USPS information, but the Inspector took no action against ECA for its refusal to provide this information. Ex. 26, Trial Tr. it 2299-301.

42. Contested as to completeness and context. While Moore does not contest that his notes dated April 29, 1985 reflect the notation "Consultant-wired (Peter Voss)," the inspectors never asked what these notes meant during their investigation. Ex. 40, Moore Aff. ¶ 27. Moore's use of the term "wired" simply meant that REI's consultant, Gnau, was politically well-connected to the Reagan Administration and was a political acquaintance of Voss. *Id.* ¶ 28; Ex. 49, Moore Dep. at 301. Furthermore, the Inspectors understood that this term was not synonymous with "bribery" and, thus, did not suggest that Moore knew that Voss was on the take. Ex. 41, Kormann Dep. at 302-03; Ex. 63, 2-61-86, Hartman's notes of 1994 speech at 2-79 ("Just because consultant is wired doesn't mean there is bribery."); Ex.

64, 2-46-59, Notes of Hartman Speech at 2-56 ("REI well insulated by consultants—consultant wired but not necessarily bribed.").

43. Not contested, except that the Inspectors actually learned that REI and Moore had begun earlier than 1985 to aggressively lobby many members of Congress and the postal service to win a sole source contract for the production of MLOCR's. Ex. 65, Examples of letters to and from Congressmen from 1983 to 1986 (hereafter "Congressional letters") (various Bates No. ranges); Ex. 66, SMFC3 08900, 08/24/83 Moore letter to Bolger; Ex. 15, WM 065444, 7/06/84 Moore letter to Bolger; Ex. 67, WM004798-99, 7/02/84 Moore letter to BOG; Ex. 67 Trial Tr. at 1597-98. This effort included, among other things, working closely with Congressman Martin Frost in 1985 to enact legislation known as the "Frost Amendment" (a/k/a Buy-America Amendment), which would have required the USPS to purchase equipment from an American company, rather than a company whose technology was owned by foreign interests. Ex. 40, Moore Aff at ¶ 21; Ex. 68, 003552-3, Copy of H.R. 3036 ("Frost Amendment").

44. Contested. The Inspectors actually learned that REI and Moore had begun much earlier than 1985 to aggressively lobby many members of Congress, the media, and the postal service to win a sole source contract for the production of MLOCRs. Ex. 65, Congressional letters (various Bates No. ranges); Ex. 15, WM 065444, 7/06/84 Moore letter to Bolger; Ex. 67, WM004 798-99, 7/02/84 Moore letter to BOG; Ex.. 26, Trial Tr. at 1597-98; Ex. 40, Moore Aff. at ¶ 21. By way of further response, Moore incorporates by reference Paragraphs 98-107, *infra*, as if set forth in full.

45. Contested. Neither the Inspectors' notes of their interviews with Marcus nor Marcus' grand jury statement reflect that Moore allegedly made any such statement. Ex. 69, SMFC3 10034-57, Marcus Grand Jury Summary at SMFC3 10048. In fact, the Inspectors' handwritten notes reflect that this comment was purportedly made by Reedy over the telephone to Marcus. Ex. 70, Inspectors' notes of 8/06/86 Marcus Interview at WM 007129 (McIntosh) ("Robert Reedy said why didn't you get Voss to order a sole source") and WM 007110 (Hartman) ("Reedy was very unhappy —why don't you get Voss to order sole source"). The notes do not reflect that Moore was ever present when the alleged comment was supposedly made by Reedy. *Id.*; Ex. 44, SMFC4 10974-97, 8/5-6/86 Marcus Interview Memorandum at SMFC4 10988; Ex. 60, SMFC3 02126-32, Inspectors' Flip Chart at SFMC3 02130. Furthermore, Marcus specifically testified at trial that his supposed discussion about getting Voss "to order sole source" was with either Bray or Reedy, but he does not recall who said what or what was actually said and that his grand jury "statement" did not refresh his recollection on this point. Ex. 26, Trial Tr. at 2000-2018. Significantly, Judge Revercomb questioned the reliability of Marcus's scripted "statement" and refused to allow it to be used as evidence of what Marcus allegedly discussed with Reedy and Bray. *Id.*

46. Contested to the extent that it purports to infer that Reedy and Bray were told that Marcus obtained information from Voss. The Inspectors developed no evidence during their investigation that showed that Reedy and Bray were told that Marcus obtained information from Voss. In fact, Marcus specifically testified that he did not tell Bray or Reedy that

documents were received from Voss. Ex. 26, Trial Tr. at 1988-89. Moreover, Voss specifically told the Inspectors during the investigation that he did not provide any information directly to anyone at REI. Ex. 47, DOJ 01389-1401, 03/9-11/88 Voss Interview Memorandum at DOJ 001394.

47. Contested as to completeness. Marcus also provided similar documents to Ruth Peters of the BOG, who used the information as her own. Furthermore, BOG member George Camp, who supported he MLOCR approach, also knew that Marcus was providing information to Peters and Voss and complimented Marcus on his work. Similarly, Gerald Rosberg, the BOG attorney, and Louis Cox, USPS General Counsel, were also aware that BOG members were using materials supportive of REI prepared by Marcus. Ex. 71, WM 004821-28, 3/25/85 Confidential Memorandum from Marcus to Peters; Ex. 72, SMFC4 00831, 1985 Kormann's notes regarding Camp's knowledge of Marcus' documents ("Camp knew Michael Marcus was writing memos. How?—Camp complimented Michael Marcus on his memos"); Ex. 41, Kormann Dep. at 358-59, 389, 818; Ex. 73, SMFC4 J 0412-19, 12/11/85 Louis Cox Interview Memorandum at SMFC4 10417 ("it appeared RE] has written some of the material presented by Governor Peters"); Ex. 74, SMFC4 10716-32, 5/01/86 Gerald Rosberg Interview Memorandum at SMFC4 10724 ("he believed Governor Peters received correspondence from Michael Marcus"). Moreover, there were management personnel at USPS who did not view it as being a conflict of interest for REI to have prepared materials for members of the BOG. Ex. 75, USA-001-144-49, Hartman's notes of James French Interview Memorandum at USA-001-147 ("not aware of

any conflict"); Ex. 22, McIntosh Dep. at 244-45. Finally, there was no evidence developed during the investigation that Moore or anyone at REI was aware that Voss was passing off Marcus' work product as his own within the USPS.

48. Contested. There is no evidence that Moore was ever aware of the statements allegedly mac a between Gnau and Reedy. In this respect, Inspectors Hartman and Kormann acknowledged during their depositions that Reedy's conduct and statements cannot be imputed to Moore without some evidence that Moore was aware of them. Ex. 41, Kormann Dep. at 148-49; Ex. 24, Hartman 4/20/00 Dep. at 212.

With respect to the October 12, 1984 Admiral's Club meeting between Reedy and Gnau, the Inspectors' notes of their interview with Gnau on Septernber 23, 1986 do not reflect any conversation about "our friend" having occurred; instead, the notes indicate that Gnau described the meeting to the Inspectors as one where there was a general discussion between Gnau and Reedy, the two established a rapport with one another, and they weighed each other's body chemistry. Ex. 76, USA-015-0352-97, Inspectors' notes of 9/23/86 Gnau interview at 0359 (Kormann) and 0380 (Hartman). Moreover, both REI and GAI referred to Voss by name (instead of "our friend") after the meeting between Gnau and Reedy, and no one ever told Frank Bray or anyone else at REI not to refer to Voss by name. Ex. 26, Trial Tr. at 1621, 1980-81, 2411, 2636; *Recognition Equip.*, 725 F. Supp. at 593.

With respect to Reedy's alleged statement that "I know you have people to take care of," Gnau admitted tha he could not recall the context in which this statement was made, nor could he recall the lead-

up statement that led to Reedy's alleged remarks. Ex. 26, Trial Tr. at 604-05. Moreover, Gnau testified that when an increase in GAI's monthly retainer was requested, Reedy indicated that there were "a lot of people to take care of in regard to the various things" that were laid out in a strategy memo that GAI had put together as part of REI's procurement efforts. Ex. 26 Trial Tr. at 455. Similarly, the Inspectors learned during their investigation that Reedy's alleged comment was made in response to GAI's need to hire additional personnel to work on the REI account. Ex. 22, McIntosh Dep. at 362-69, 375; Ex. 77, WM 007030-137, Inspectors notes of 8/05/06/86 Marcus interview at 007112 (Hartman) and 007130 (McIntosh).

With respect to Reedy's alleged statement to Gnau concerning "what's your arrangement with Peter Voss," Gnau admitted that he could not recall the context in which this statement was made, nor could he recall the lead-up statement that led to Reedy's alleged remarks. Ex. 26, Trial Tr. at 404-05. Instead, Gnau conceded that "I have tried for many, many months and a long time to put that in its proper perspective, but I will go on record to tell you that I never told Mr. Reedy tha Mr. Voss was on the payroll or that I was compensating him in any way." *Id.* at 405, 557. In fact, when Reedy asked Gnau directly in the Spring of 1986 if he had made any payments to anyone, Gnau answered "absolutely not" and explained that he had simply loaned Voss some money because Voss was having financial problems in connection with his divorce. *Id.* at 561.

49. Contested. According to the scripted statement that the Inspectors prepared and that Valder read to the grand jury, Bray told the Inspectors

that "Moore developed a marketing strategy that Moore believed would support Governor Sullivan's recommendation to award a sole-source contract to AEG/ECA for Phase 11-A and result in a sole-source award to REI for Phase III." Ex. 78, SMFC3 01414-1526,7/16/87 Bray Grand Jury Tr. at SMFC3 01484. Additionally, the BOG and REI had both expressed concern to USPS management in late 1985 and early 1986 that AEG s refusal to release proprietary technical information to REI for the Phase IIA retrofit program amounted to a *de facto* sole source contract to ECA. Even some of the personnel within the USPS and the BOG reconize that without AEG's technical data, REI would be unable to complete in the Phase IIA retrofit progam. Ex. 79, WM 004887, 10/10/85 BOG Letter to Carlin; Ex 49, Moore Dep. at 240-41; Ex. 80, WM 005524-26, 1/28/86 Letter from Reedy to Simmons; Ex. 81, WM 000767-71, 1/16/86 Internal USPS Memorandum; Ex. 28, WM 003965-72, 11/C 1/85 R. Peters memo at 003965 ("the unwillingness of one vendor [AEG] to release allegedly proprietary information has made . . . a de facto sole source procurement"); Ex. 21, Edwards Dep. at 166.

50. Contested. REI requested the necessary technical information from AEG that REI needed to develop a retrofit kit in the most timely and inexpensive way possible. Ex. 49, Moore Dep. at 240-41; See Ex. 9, Correspondence between REI and AEG, e.g., WM 064806, 11/18/85 Letter from Reedy to Scheidhauer and WM 036018-20, 1/28/86 Letter from Reedy to John Simmons. According to the Inspectors' notes of their interviews with Bray, Bray told them that he prepared a list of technical data needed from AEG and "asked for more than he expected to get, expected to negotiate

with AEG." Ex. 82, WM 016250-64, Kormann notes of 6/10/86 Bray interview at WM 016258. Bray also told the Inspectors that "Moore believed that REI could not retrofit without documentation." Ex. 83, WM 016376-86, 07/14/87 Hartman notes of Bray interview at WM 016376. Additionally, Bray told the Inspectors that he "was not instructed to make [AEG] say no—was instructed to ask for everything. We didn't know what we needed." Ex. 84, SMFC3 01952-70, Hartman notes of Bray interview at WM 016360.

51. Contested. Defendants have offered no factual support for this statement. Nor have they identified the "information" from Bray that allegedly led them to doubt REI's good faith participation in the Phase IIA procurement.

52. Not contested. By way of further response, Moore also told the Inspectors that Spartin was more of a name dropper than anything else. Inspector's Br., Ex. B & Exhibit 5 thereto at 11. The record also shows that Spartin was more interested in selling his recruiting services to REI than actually working on any postal-related work. Ex. 26., Trial Tr. at 2641-42; Ex. 85, WM 005627-69, Spartin letters to REI. Moore did not even meet Spartin until the end of March 1985, at which time Spartin focused on his MSL recruiting activities because he "wanted recruiting assignments from REI." Ex. 26, Trial Tr. at 2410-11. Moreover, the investigation showed that Spartin was busy throughout 1985 with his recruiting activities and that there was no telephone or other contact between Moore and Spartin prior to December 1985. Ex. 35, SMFC4 00004-147, "Details of Offense"; Ex. 26, Trial Tr. at 2682-85.

53. Not contested.

54. Not contested. By way of further response, Moore incorporates by reference Paragraph 109, *infra* as if set forth in full.

55. Not contested. By way of further response, Moore incorporates by reference Paragraphs 137-52, *infra*, as if set forth in full.

56. Contested as to completeness and context. In or about mid-December 1985, Moore provided Spartin with the names of three preeminent American businessmen: John Lawrence, a former Chairman of REI; Chester Nimitz, former Admiral of the United States Navy and Chairman of the Board and CEO of Perkin-Elmer Corporation; and Albert Casey, former Chairman and CEO of Times Mirror Corporation and Chairman of American Airlines. Ex. 26, Trial Tr. at 737, 1511, 2705, 3090; Ex. 52, Spartin Polggraph at 00249; Ex. 49, Moore Dep. at 250, 256-59; *Recognition Equip.*, 725 F. Supp. at 600. Moore did not, however, recommend any particular candidate over another. Ex. 22, McIntosh Dep. at 322. Nor did he have any role whatsoever in the appointment of Casey as the new postmaster general or the removal of PMG Carlin. On the contrary, the BOG met on December 2, 1985 to discuss their dissatisfaction with Carlin's performance and unanimously voted on January 6, 1986 to remove Carlin and replace him with Albert Casey. Ex. 26, Trial Tr. at 2473, 2926-33, 2979-80, 2988, 2991; *Recognition Equip.*, 725 F. Supp. at 599. In addition, the Inspectors were aware from their investigation that Carlin "did a terrible job" and was viewed as "indecisive and not a good PMG" by senior USPS management and the BOG. Ex. 35, SMFC4 00004-147, "Details of Offense" at SMFC4 00138; Ex. 86, Jellison Dep. at 172-73; Ex. 24, Hartman 4/20/00 Dep. at 150; Ex. 41, Kormann Dep. at

772-73, 370-71. By way of further response, Moore incorporates by reference Paragraphs 137-52, *infra*, as if set forth in full.

57. Contested. The record does not reflect that Casey's appointment caused speculation regarding corruption relating to REI's efforts to obtain an OCR contract. Rather, the speculation was only whether Casey's appointment would improve REI's chances for a USPS contract. See Inspectors' Br., Ex. B ¶ 36 & Exs. 8 and 9. By way of further response, Moore incorporates by reference Paragraphs 147-52, *infra*, as if set forth in full.

58. Contested. Moore does not contest that he at first did not believe that Spartin was recruiting for a new postmaster general to replace Carlin. Moore does contest, however, that his explanation of his contact with Spartin should have raised any question about Moore's candor. The record shows that Spartin was more interested in selling his recruiting services to REI than actually working on any postal-related work. Ex. 26, Trial Tr. at 2641-42.; Ex. 85, WM 005627-69, Spartin letters to REI. Moore did not even meet Spartin until the end of March 1985 at which time Spartin focused on his MSL recruiting activities because he "wanted recruiting assignments from REI." Ex. 26, Trial Tr. at 2410-11. Moreover, the investigation showed that Spartin was busy throughout 1985 with his recruiting activities and that there was no telephone or other contact betwveen Moore and Spartin prior to December 1985. Ex. 35, SMFC4 00004-147, "Details of Offense"; Ex. 26, Trial Tr. at 2682-85.

59. Contested. Spartin admitted to the Inspectors during their investigation that Moore would not go along with Spartin's attempt to cover-up his

(Spartin's) activities by saying that Moore had called Spartin recommending candidates for postmaster general. Indeed, Spartin told the Inspectors that when he talked to Moore about this issue, Moore said "you called me, I responded to your inquiry, those are the facts, nothing else to talk about." Ex. 87, WM 009065-67, Hartman notes of 6/23/86 Spartin interview at 9066; Ex. 88, WM 009068-69, McIntosh notes of 06/23/86 Spartin interview at 9068; Ex. 24, Hartman 04/20/00 Dep. at 41-45; 48-50; Ex. 22, McIntosh Dep. at 329-330; Ex. 52, Spartin Polygraph at 00251. Moreover, Spartin admitted during his polygraph examination that neither Moore nor anyone else at REI had agreed to participate in any of Spartin's efforts to hide his own conduct. Ex. 52, Spartin Polygraph at 00251; Ex. 26, Trial Tr. at 2626-27.

60. Contested. When Moore and Reedy had lunch with Gnau at the Maison Blanche in Washington, D.C. on April 14, 1986, Moore said that their attorneys were concerned about the meeting because of the ongoing investigation, but that he and Reedy were not doing anything wrong and simply wanted to know what had really been happening between Voss, Gnau and Spartin. Moore told Gnau that he was very concerned about Spartin trying to involve him in some kind of effort to change facts. Ex. 26, Trial Tr. at 547-48, 550-53; *Recognition Equip.*, 725 F. Supp. at 501. Moore and Reedy also asked Gnau at the April 14 meeting what Gnau's role had been in the matter, to which Gnua purportedly "told them that I didn't think it was in my interest or their interest for me to discuss what had happened and just better that they didn't know." Ex. 26, Trial Tr. at 547. Gnau never told either Moore or

Reedy that he had made any payments to Voss. *Id.* at 557, 582-83.

A month later in May 1986, Moore again told Gnau while attending a reception on the White House lawn that he was concerned that Spartin was trying to involve Moore in some type of cover up. Gnau did not have the impression, however, that Moore participated in a cover up, but only that Spartin was attempting to involve Moore in such activities. Ex. 26, Trial Tr. at 553; *Recognition Equip.*, 725 F. Supp. at 601. Gnau never told the Inspectors that Moore said he had agreed upon a cover-up with Spartin, and Defendants cite no record support for such an assertion.

61. Contested. The Inspectors had no proof or verification that Moore, Reedy, Gnau and Voss had supposedly met and allegedly developed a story to cover-up their alleged involvement with one another. Moore and Reedy, in fact, had never attended any such meeting, nor had they agreed with Gnau and Voss on any cover-up. Ex. 40, Moore Aff. at ¶ 29. Similarly, neither Gnau nor Voss ever told the Inspectors that any such meeting had ever occurred or that Moore and Reedy had agreed to any cover-up. Spartin likewise told the Inspectors that neither Moore nor anyone else at REI had agreed to participate in any of Spartin's efforts to hide his own conduct. Ex. 52, Spartin Polygraph at 00251; Ex. 26, Trial Tr. at 2626-27.

62. Contested as to completeness. REI made a good faith search for the referenced records and was simply unable to locate them. Ex. 89, DOJ23 002271-84, 6/04/87 Grand Jury Tr. at DOJ23 0(2273-84 (Carol Lyon testimony); Ex. 90, SMFC3 09187-88, 5/29/86 Lyon affidavit. REI initially was unable to locate printed copies of the subpoenaed toll records. Ex. 89, Lyon's

6/04/87 Grand Jury testimony at DOJ23 002271. After Inspector Hartman called REI to request the whereabouts of the missing records, REI obtained backup copies of some of the records by reprinting the phone records from backup computer tapes. *Id.* at DOJ23 002283. Moreover, the Inspectors subpoenaed telephone records from the telephone company, as well as from Voss, Gnau, and Spartin (and Spartin's employer) during their investigation, and they therefore had access to all of the relevant toll records for the time periods referenced. Ex. 91, SMFC3 13144-78, Inspectors' subpoena service and compliance report (master list); Ex. 92, SMFC3 13368-80, 10/26/87 Printout of Moore documents received by the Inspectors via subpoena; Ex. 93, 7/84-3/86 GTE letters to the Inspectors re: REI toll records produced (various Bates No. ranges); Ex. 24. Hartman 05/08/98 Dep. at 362-63. In addition, Moore produced his notebooks with his handwritten notes in them for the referenced time periods, giving the Inspectors access to any notes of phone calls (including those with Peter Voss) for the time periods in question. Ex. 94, WM 036024-460, Moore's Notebooks.

63. Contested as to completeness and materiality. Moore does not dispute that one of his postal notebooks that was produced during the investigation contained 44 sheets, instead of the 80 sheets referenced on the cover. Moore also does not dispute that there were no entries in that notebook between January 6, 1986 and June 24, 1986. However, during their interviews with Moore as part of their investigation, the Inspectors never asked why pages were missing or why there were no entries between certain dates in the notebook. Ex. 40, Moore Aff. ¶ 27. As Moore explained

during his deposition, it was his practice to occasionally remove pages from his notebook with information for his secretary to type, after which the pages would be discarded. Ex. 49, Moore Dep. at 330-31. This practice is confirmed by some of Moore's other notebooks that were produced during the investigation that did not contain all of their pages either. Ex. 95,WM 035216-326, Moore's 80 sheet spiral notebook for October through December 1985 (missing 25 pp.). Moreover, Moore used his notebooks randomly and did not always write in the same notebook, which explains why there are no entries in the referenced notebook between January 6, 1986 and June 24, 1986. Ex. 49, Moore Dep. at 329.

64. Contested as to accuracy, completeness and context. Moore does not dispute that his notebook from January 27, 1987 contains information similar to that referenced in this Paragraph, but it is not as quoted by the inspectors. *See* Inspectors' Br., Ex. B at Exhibit 11 (DOJ11 001045). These excerpts were based on a videotape that Moore watched, at the suggestion of REI's general counsel, about what to expect during a deposition. *See* Ex. 49, Moore Dep. at 304-06; Ex. 96, WM 035478-602, Moore's notebook at WM 035513 ("see deposition tape"). This information was conveyed to REI's staff during a staff meeting in order to help them understand what they could expect if they were interviewed or subpoenaed to testify in connection with the investigation. Ex. 49, Moore Dep. at 304-07. These notes do not reflect suggestions by Moore to REI's staff members to impede in any way the Inspectors' investigation. In fact, REI's staff recalled before the grand jury, when asked about these notes, that Moore encouraged his staff to be helpful, accurate and honest if

and when interviewed by the Inspectors. Ex. 97, SMFC3 03745, 6/04/87 Grand Jury Tr. (Paula Ezernack testimony). Similarly, the Inspectors were told during their interview of Frank Bray that Moore never suggested that Bray should destroy or conceal any documents or that he should change, withhold or conceal any information from the Inspectors. Ex. 41, Kormann Dep. at 673-74; Ex. 98, SMFC3 01886-96, Kormann notes of 07/14/87 Bray interview at SA4FC3 01889; Ex. 80, WM 16250-64, Kormann notes of 6/10/86 Bray Interview at WM 16250.

65. Contested as to characterization and completeness. In their testimony before the grand jury, REI's staff recalled that Moore had mentioned some of the referenced items (within the context of his comments, during a staff meeting and that Moore had likewise encouraged his staff to be helpful, accurate and honest if and when interviewed by the Inspectors. Ex. 97, SMFC3 03745, 6/04/87 Grand Jury Tr. (Paula Ezernack testimony). By way of further response, Moore incorporates by reference his response to Paragraph 64 as if set forth in full.

66. Not contested.

67. Contested as to completeness and materiality. While Unysis Corp. and REI teamed in October 1988 for a test of a multi-line OCR, REI's machines malfunctioned due to the USPS's failure to properly maintain the OCRs. In fact, Unysis claimed that an excessive amount of oil in the air lines to the machines was the likely cause of the malfunction. The malfunction was not, as alleged, based on inferior equipment. Ex. 99, POS-004-1088-90, 6112189 Internal USPS Memorandum.

68. Contested as to completeness and materiality. While the quoted language appears in the court's opinion, REI's machines malfunctioned due to the USPS's failure to properly maintain the OCRs. In fact, Unysis claimed that an excessive amount of oil in the air lines to the machines was the likely cause of the malfunction. Ex. 99, POS-004-1088-90, 6/12/89 Internal USPS Memorandum.

69. Contested as to completeness. While Robbins' only activity as part of the investigation was his polygraph examination of Spartin, Robbins learned during that polygraph that Spartin had been improperly provided with the grand jury statements and testimony of other witnesses, but he did nothing to investigate that matter or to raise any concerns about that issue. Ex. 52, Spartin Polygraph at 14, 16, 18, 19, 22, 28, 33; Ex. 100, Robbins Dep. at 76-79. By way of further response, Moore incorporates by reference Paragraphs 197-208, *infra*, as if set forth in full.

70. Contested as to completeness. While Moore does not dispute that Edwards worked on the investigation from mid-1985 through January 1987, he was an integral member of the investigative team involved in pursuing the investigation and potential charges against Moore and REI. Among other actions, Edwards was involved with other Inspectors in "digging up dirt" on Moore and REI's congressional supporters, as well as suggesting that REI's PAC contributions be investigated. Ex. 101, SMFC4 07980-82, Edward's notes regarding "digging up dirt" on REI's supporters; Ex. 21, Edwards Dep. at 200-05. Additionally, Edwards was a participant in the Spartin incident in which a copy of Spartin's immunity agreement was torn in two, and he engaged in what Inspector

Harrington believed to be inappropriate conduct during the investigation. Ex. 21, Edwards Dep. at 121-25; Ex. 26, Trial Tr. at 3446, 3467. By way of further response, Moore incorporates by reference Paragraphs 153-273, *infra*, as if set forth in full.

71. Contested as to accuracy and completeness. Moore does not dispute that McIntosh principally worked on the investigation from November 1985 to August 1987. However, McIntosh was asked by Clauson to rejoin the investigative team in late-1988. Moreover, McIntosh was an integral member of the investigative learn involved in pursuing the investigation and potential charges against Moore and REI. Among other actions, McIntosh was involved in improperly disclosing grand jury and other investigation materials to Carlin and participating in the incident in which a copy of Spartin's immunity agreement was torn in two. Ex. 22, McIntosh Dep. at 95-105, 108-09, 194, 197, 382-96; Ex. 102, DOJ23 000687-88; USA 015-0157-58, McIntosh notes dated 6/09/86 (with FBI laboratory examination results given to Carlin); Ex. 103, SMFC4 01183, 12/09/86 McIntosh notes of discussion with Carlin; Ex. 104 McIntosh notes dated May (SMFC1 00106), July (SMFC1 06884), and August 1989 (SMFC4 00889) evidencing later involvement in REI investigation. By way of further response, Moore incorporates by reference Paragraphs 153-273, *infra*, as if set forth in full.

72. Contested as to completeness. Moore does not dispute that Harman worked on the investigative team from November 1985 through the trial of Moore, Reedy and REI. In fact, Hartman was one of the leaders of the investigation and was involved, among other things, in preparing the "Arguments for

Indicting the Corporation" and the "Details of Offense," both of which targeted Moore for exercising his constitutional right to lobby Congress and the media. Ex. 24, Hartman 5/07/98) Dep. at 17, 173 and 4/20/00 Dep. at 60-61, 107; Ex. 36, SMFC3 09861-64, "Arguments for Indicting the Corporation"; Ex. 35, SMFC4 00004-147, "Details of Offense." He was also involved, among other things, in improperly disclosing grand jury materials to Spartin, participating in the preparation of scripted grand jury "witness statements," participating in the incident in which a copy of Spartin's immunity agreement was torn in half, participating in the incident in which Valder told William Hittinger that he (Valder) did not care whether Moore was guilty or innocent because he just wanted a high profile conviction, and suggesting that Moore be prosecuted. Ex. 24, Hartman 5/07/98 Dep. at 120-25, 148-49, 262, 310-14, 316-17, 336-38 and 5/08/98 Dep. at 413-14; Ex. 105, Valder Dep. at 7 7783; Ex. 41, Kormann Dep. at 448-49, 482-85, 519-21, 539-40. By way of further response, Moore incorporates by reference Paragraphs 153-273, *infra*, as if set forth in full.

73. Contested as to completeness. Moore does not dispute that Kormann worked on the investigative team from November 1985 through the trial of Moore, Reedy and REI. In fact, Kormann was one of the leaders of the investigation and was involved, among other things, in preparing the "Arguments for Indicting the Corporation" and the "Details of the Offense," both of which targeted Moore for exercising his constitutional right to lobby Congress and the media. Ex. 41, Kormann Dep. at 163-66, 744-45; Ex. 36, SMFC3 09861-64, "Arguments for Indicting the Corporation"; Ex. 35, SMFC4 00004-147, "Details of the

Offense." He was also involved, among other things, in improperly disclosing grand jury materials to Spartin, participating in he preparation of scripted grand jury "witness statements," participating in the incident in which a copy of Spartin's immunity agreement was torn in half, participating in the incident in which Valder told William Hittinger that he (Valder) did not care whether Moore was guilty or innocent be cause he just wanted a high profile conviction, and suggesting that Moore be prosecuted. Ex. 41, Kormann Dep. at 101, 333-37, 417, 426, 448-49, 482-85, 494, 519-21, 539-40, 563-64; Ex. 105, Valder Dep. at 177-83. By way of further response, Moore incorporates by reference Paragraphs 153-273, *infra*, as if set forth in full.

74. Contested. It is irrelevant whether or not the Inspectors were specifically instructed to prosecute Moore for his criticism of the USPS. The direct and circumstantial evidence shows that the Inspectors in fact sought Moore's indictment and prosecution because of his exercise of his First Amendment right to petition Congress and criticize the USPS in the media. *See, e.g.*, Ex. 36, SMFC3 09861-64, "Arguments for Indicting the Corporation"; Ex. 35, SMFC4 00004-147, "Details of the Offense." By way of further response, Moore incorporates by reference Paragraphs 153-273, *infra*, as if set forth in full.

75. Contested. The Inspectors were intimately involved in the decision to script the grand jury witness statements and have them presented to the grand jury. In fact, Inspectors Hartman and Kormann specifically discussed and agreed with Valder that witness statements should be prepared and presented to the grand jury. Ex. 41, Kormann Dep. at 519-21. In addition, it was common knowledge among the Inspec-

tors working on the case that witness statements were being prepared for presentation to the grand jury. *Id.* at 520. Moreover, the Inspectors had never before utilized such a procedure before the investigation and prosecution of Moore, nor did they ever use such a procedure after the case against Moore ended. Ex. 24, Hartman 5/07/98 Dep. at 272-73; Ex. 41, Kormann Dep. at 520; Ex. 21, Edwards Dep. at 139, 373-77; Ex. 26, Trial Tr. at 3478-79 (Harrington testimony).

76. Contested. The grand jury witness statements did not present a fair and accurate representation of what the Inspectors had been told during their interviews of the witnesses. Nor did witnesses hive any meaningful opportunity to review and make changes to their statements. *See, e.g.*, Ex. 26, Trial Tr. at 896-97, 903-05.

- John Gnau's statement, for example, omitted the central and critical fact that Gnau had never told Moore or anyone at REI about the payments to Voss. Gnau's statement likewise lacked any context for many of the alleged statements that were purportedly made by Reedy and/or others at REI. Ex. 41, Kormann Dep. at 576, 580, 583, 590-607; Ex. 39, DOJ23 001681-702, Gnau Statement; Ex. 26, Trial Tr. at 588, 590-91, 601, 60304, 606-11. By way of further response, Moore incorporates by reference Paragraphs 166-70, 173-79 and 219-20, *infra*, as if set forth in full.
- Spartin's statement too was carefully crafted to omit the fact that Spartin never told Moore or anyone at REI about the payoffs, as well as the fact that Spartin had no knowledge as to whether anyone else had ever told Moore about the payoffs. Ex. 106, DOJ28 000155-82, Grand Jury "Statement

of William Spariin (hereafter "Spartin Statement"): Ex. 26, Trial Tr. at 2719-22 (Spartin testimony); Ex. 41, Kormann Dep. at 496-97, 504-05, 521-25. By way of further response, Moore incorporates by reference Paragraphs 166-70, 173-79 and 210-16, *infra*, as if set forth in fill.

- Marcus's statement was also not a fair and accurate presentation of information that the Inspectors had been told during their investigation. For example, there was no mention of the fact that Marcus had never told Moore or anyone else at REI about the payoffs to Voss. Nor was there any context for many of the statements contained in Marcus' Grand Jury summary. Ex. 69, SFMC3 10034-57. Marcus Grand Jury Summary, Ex. 22, McIntosh Dep. at 344-74.

- Frank Bray's statment was also not the statement that Bray wanted to make. Ex. 26, Trial Tr. at 1808-13, 1832, 1952, 3477-92. In fact, the Inspectors have admitted that they refused to let Bray make changes to his statement even though it was supposed to be his statement. Ex. 41, Kormann Dep. at 620-24, 664. By way of further response, Moore incorporates by reference Paragraphs 166-70, 173-79 and 221-28, *infra*, as if set forth in full.

- Sharon Peterson's statement was handed to her on the day she arrived to testify before the grand jury. Prior to that time, she had never seen the statement, and she was not given any meaningful opportunity to review and revise the statement. Ex. 26, Trial Tr. at 896 97, 903-05. In fact, she testified that when she saw the statement, she "was perturbed somewhat in the way they had written it up." *Id.* at 897.

77. Contested. While the procedure described may have generally been followed, such a procedure was meaningless since the witnesses' grand jury statements were carefully scripted ahead of time and did not fairly and accurately represent what the witnesses had told the Inspectors. *See* Moore's response to Paragraph 76, which is incorporated by reference as if set forth in full. Moreover, the witnesses were not always present during the presentation of their statements and testimony to the grand jury. In fact, at one point, the summary statements for four out of the five co-conspirators—Voss, Gnau, Marcus, and Peterson—were given to the grand jurors to read on their own. Ex. 107, DOJ1 000540-64, 3/19/87 Grand Jury Tr. at DOJI 000543, 557-61 (Valder's statements to the Grand Jurors). There were no opportunities for the grand jurors to ask questions of these key witnesses. Moreover, instead of inviting back those witnesses to answer any questions, Valder asked the Inspectors to be present to answer any questions the grand jurors may have had when Valder read the witness summaries. *Id.* Similarly, Inspector Hartman at one point ended up testifying as to what the co-conspirators allegedly said, heard, and did. Ex. 108, WM 049037-62, WMG-008-0875-900, 3/19/87 Grand Jury Tr. (Hartman testimony). At several points during his testimony, Kormman purported to quote verbatim inculpatory statements allegedly made by Robert Reedy, which allegedly were made third hand to John Gnau. *Id.* at WM049051-52. Hartman did not, however, provide any exculpatory evidence to the grand jury. Ex. 24, Hartman 05/07/98 Dep. at 253-55, 269-271 and 05/08/98 Dep. at 419-20.

78. Contested. AUSA Valder—working in concert with Inspectors Hartman and Kormann—provided Spartin with grand jury summary statements of four co-conspirators for the purpose of shaping Spartin's testimony. Ex. 26, Trial Tr. at 22550-54, 2561, 2609, 272737; Ex. 41, Kormann Dep. at 148-50, 537-40, 556 (indicating that Inspectors were an integral part of the process that led to giving Spartin the grand jury statements of other witnesses); Ex. 105, Valder Dep. at 376-77 ("*we* gave [Spartin] parts of summary statements"), 421 ("***The Inspectors and I*** were religious in not letting [Spartin] know what other uses those documents had been put to . . ."); Ex. 24, Hartman 4/20/00 Dep. at 317; Ex. 52, Spartin Polygraph at 14, 16, 18, 19, 22, 28, 33. In fact, Spartin testified during the criminal trial than both Valder and the Inspectors were involved in providing him with the grand jury witness statements of other witnesses. Ex. 26, Trial Tr. at 2730. *See also* Ex. 109, DOJ28 000183A-229, 9/01/87 Spartin Grand Jury Tr. at DOJ28 000187-88, 000192 (Spartin acknowledged to the grand jury that he had been given materials by the Inspectors to "refresh his recollection," after which he gave his "opinion" that Moore must have known about the payments to Voss). Moreover, Inspector Kormann specifically testified that, with respect to the grand jury statements of Gnau and Marcus, "***my recollection is that is something that we would have given [Spartin] and, based on what he says here in this polygraph transcript, we probably did.***" Ex. 41, Kormann Dep. at 539-40 (emphasis added). Significantly, each one of the statements that were shown to Spartin had previously been presented to the grant jury as part of the respective witnesses' testimony. Ex. 26, Trial Tr. at 2550-54, 2561, 2609, 2727-37.

79. Contested. Moore disputes that Gettings —who is now deceased—specifically requested witness summary statements or grand jury testimony of other witnesses. There is no way Gettings would have been aware of the existence of the witness summaries of other grand jury witnesses unless the Inspectors and Valder had disclosed such information to him. As explained in Paragraph 78, AUSA Valder and Inspectors Hartman and Kormann collectively agreed to provide the witness statements to Spartin and Gettings for the purpose of shaping Spartin's testimony. Furthermore, it is immaterial whether Gettings requested any information from Valder or the Inspectors.

80. Contested. As explained in Paragraph 78, AUSA Valder and Inspectors Hartman and Kormann collectively agreed to provide the witness statements to Spartin and Gettings for the purpose of shaping Spartin's testimony. Furthermore, it is immaterial whether Gettings requested any information from Valder or the Inspectors.

81. Contested. As explained in Paragraph 78, AUSA Valder and Inspectors Hartman and Kormann collectively determined what materials would be provided to Spartin and Gettings.

82. Contested. As explained in Paragraph 78, AUSA Valder and Inspectors Hartman and Kormann collectively agreed to provide the witness statements to Spartin and Gettings for the purpose of shaping Spartin's testimony. In this respect, Spartin testified during the criminal trial that both Valder and the Inspectors were involved in providing him with the grand jury witness statements of other witnesses. Ex. 26, Trial Tr. at 2730. Moreover, Inspector Kormann specifically testified that, with respect to the grand jury

statements of Gnau and Marcus, "my recollection is that is something that we would have given [Spartin] and, based on what he says here in this polygraph transcript, we probably did." Ex. 41, Kormann Dep. at 539-40. Significantly, each one of the statements that were shown to Spartin had previously been presented to the grand jury as part of the respective witnesses' testimony. Ex. 26, Trial Tr. at 2550-54, 2561, 2609, 2727-37. By way of further response, Moore incorporates by reference his response to Paragraph 78.

83. Contested. As explained in Paragraph 78, AUSA Valder and Inspectors Hartman and Kormann collectively agreed to provide the witness statements—which had already been presented to the Grand jury as part of the witnesses' testimony—to Spartin and Gettings for the purpose of shaping Spartin's testimony. In this respect, Spartin testified during the criminal trial that both Valder and the Inspectors were involved in providing him with the grand jury witness statements of other witnesses. Ex. 26, Trial Tr. at 2730. Moreover, Spartin repeatedly stated in his polygraph examination that he was provided with the grand jury testimony of various witnesses, which "colored" his view of the facts. Ex. 52, Spartin Polygraph at 14, 16, 18, 19, 22, 28, 33. By way of further response, Moore incorporates by reference his response to Paragraph 78.

84. Contested as to completeness. At this meeting, Spartin was surrounded by as many as 10 postal Inspectors, including, among others, Hartman, Kormann, McIntosh and Edwards. One of the Inspectors who was present during this meeting with Spartin characterized it as a "bizarre" event that went from "bad to worse." Ex. 21, Edwards Dep. at 121-27; Ex. 105, Valder Dep. at 336; Ex. 41., Kormann Dep. at 426;

Ex. 24, Hartman 5/07/98 Dep. at 120-25 and 4/20/00 Dep. at 53-4; Ex. 22, McIntosh Dep. at 194; Ex. 26, Trial Tr. at 2595-96 (Spartin Testimony). Moreover, ripping up Spartin's immunity agreement was not a typical practice of the Inspectors or the prosecutor. In fact, the Inspectors had never witnessed or participated in such a tactic either before or after the Moore investigation. *See, e.g.*, Ex. 41, Kormann Dep. at 60, 427-28; Ex. 21, Edwards Dep. at 135; Ex. 24, Hartman 5/07/98 Dep. at 145-46. And the prosecutor admitted as well that the Moore case was the one and only time that he engaged in the tactic of physically ripping up a witness' immunity agreement. *See* Ex. 105, Valder Dep. at 686. By way of further response, Moore incorporates by reference Paragraphs 188-93, *infra*, as if set forth in full.

85. Not contested. By way of further response, Moore incorporates by reference Paragraphs 197-208, *infra*, as if set forth in full.

86. Contested as to completeness. The purpose of Spartin's polygraph was principally two-fold: to determine (1) whether Spartin had any personal knowledge of whether REI had been told about or was aware of the payments being made to Voss, and (2) whether Spartin had planned with anyone to withhold or conceal any information from the investigators. Ex. 100, Robbins Dep. at 27-28, 58. The examination showed that Spartin was being truthful when he said 19 times that he had no knowledge of anyone at REI being told about or being aware of the payoffs to Voss and when he said that he had not agreed with anyone to conceal any facts or information from the investigators. *Id.* at 71. By way of further response, Moore incorporates by reference Paragraphs 197-208, *infra*, as if set forth in full.

87. Contested. Moore does not contest that Hartman and Kormann met with Carlin on September 20, 1988 to verify the accuracy of some of the information within the draft indictment. Moore also does not dispute that the Inspectors had a copy of the draft indictment with them when they visited Carlin to discuss certain facts in the draft indictment. Moore does contest, however, that the draft indictment was never shown to or identified to Carlin during the interview. Although direct evidence exists that the Inspectors physically handed a copy of the indictment to Carlin, a reasonable inference exists that the indictment was actually shared with Carlin, particularly in light of the fact that (1) the Inspectors actually had the draft indictment with them at Carlin's interview; (2) the indictment that was actually returned against Moore, Reedy and REI contained language that had been suggested by Carlin during his meeting with inspectors Hartman and Kormann on September 20, 1988, Ex. 26, Trial Tr. at 2151-64; and (3) there is direct and circumstantial evidence of retaliatory intent that exists in this case. See *infra* ¶¶ 153-273, which are incorporated by reference herein as if set forth in full. Moreover, the record shows that Carlin and/or his counsel were provided with other information or restricted documents prepared by the inspection service, leading to a reasonable inference tht the draft indictment was also shared with Carlin. See ¶¶ 255-64, *infra*, which are incorporated by reference herein as if set forth in full; Ex. 110, SMB5 01738-39, Correspondence between Clauson and Carlin's attorney (Saltzstein).

88. [sic]. Contested. McIntosh's notes taken contemporaneously with his telephone conversation with Carlin state "T/C Paul Carlin [12/09/86, 9:55 a.m.]

Mr. Carlin asked for results from interviews with DPMG Strange and others regarding the second memo on the BOG freeze order. I advised him of the results of the interviews with Casey, McKean, Strange and the lab examination." Ex. 103, SMFC4 01183, 12/09/86 McIntosh's notes of discussion with Carlin; Ex. 22, McIntosh Dep. at 382-89. Former Chief Postal Inspector Clauson testified that this disclosure of investigative information to Carlin was improper, and McIntosh admitted that the Inspection Service had a policy in effect at that time that prohibited the disclosure of investigative materials to third parties. Ex. 20, Clauson Dep. at 168; Ex. 22, McIntosh Dep. at 136-37. Moreover, while McIntosh would not have disclosed the results of the investigation to an ordinary citizen, or to an ordinary postal employee for that matter, he nonetheless disclosed the results to Carlin to assist him in litigation and because he felt that Carlin was "getting screwed." Ex. 22, McIntosh Dep. at 389-93. By way of further response, Moore incorporates by reference Paragraphs 256-61, *infra*, as if set forth in full.

89. [sic]. Not contested. By way of further response, Moore incorporates by reference his response to Paragraph 88 [sic] as if set forth in full.

90. [sic]. Contested. McIntosh's contemporaneous notes of his discussion with Carlin reflect the fact that McIntosh informed Carlin of the results of interviews with Casey, McKean and Strange, as well as the results of a confidential laboratory examination. Ex. 103, SMFC4 01183, 12/09/86 McIntosh's notes of discussion with Carlin; Ex. 22, McIntosh Dep. at 382-89. Former Chief Postal Inspector Clauson testified that this disclosure of investigative information to Carlin was mproper, and McIntosh admitted that the Inspec-

tion Service had a policy in effect at that time that prohibited the disclosure of investigative materials to third parties. Ex. 20, Clauson Dep. at 168; Ex. 22, McIntosh Dep. at 136-37. Moreover, while McIntosh would not have disclosed the results of the investigation to an ordinary citizen, or to an ordinary postal employee for that matter, he nonetheless disclosed the results to Carlin to assist him in litigation and because he felt that Carlin was "getting screwed." Ex. 22, McIntosh Dep. at 389-93. By way of further response, Moore incorporates by reference Paragraphs 256-61, *infra*, as if set forth in full interview.

B. Plaintiff's Statement of Material Facts Not Genuinely Disputed

In further response to defendants' statement of undisputed facts, Moore submits the following additional facts in opposition to Defendants' summary judgment motions.

The OCR Scanner Controversy

91. In the early 1980s, the USPS decided to use optical character reading equipment to facilitate the indentification of addresses on mail. As part of its OCR strategy, the USPS considered whether to employ multi-line or single-line scanners. Ex. 40, Moore Aff. ¶¶ 16, 18-22; Ex. 111, DOJ 000032-372, 1/87 Zip+4/ Automation Investigation Report; Ex. 23, 002653-778, 1984 OTA Report.

92. Recognition Equipment, Inc. ("REI") was a Dallas-based company that manufactured, among other things, equipment that could scan or read characters and process that information. Ex. 40, Moore Aff. ¶ 15.

93. Using $50 million worth of USPS research and development funds, REI had developed multi-line optical character reading equipment that would enable the USPS to fully implement its proposed Zip+4 strategy without having to persuade large commercial mailers to convert their mailing lists to Zip+4. Ex. 40, Moore Aff. ¶¶ 15, 16, 18. Five MLOCRs manufactured by REI were actually implemented in "live mail" environments around the country. *Id.* ¶ 18.

94. REI was he only American company that had developed MLOCR technology in the early 1980s. *Id.* ¶ 18.

95. REI's chief competitor in the OCR procurement process was ElectroCom Automation (ECA), who had teamed with a Geman company called AEG Telefunken (AEG) to manufacture OCR equipment. Ex. 40, Moore Aff.¶ 40.

96. In March 1982. Moore became the president of REI. Ex. 40, Moore Aff. ¶ 6.

97. The relationship between REI and the USPS was strained before Moore's arrival at REI and worsened after Moore took over leadership of the company. *Id.* ¶¶ 15-22.

98. Shortly after taking office at REI, Moore met with Postmaster General William Bolger to urge the USPS to adopt multi-line optical scanners. In addition, Moore communicated frequently with Bolger in an effort to sell MLOCRs to the USPS. *Id.* 116.

99. In September 2, 1983, in response to Moore's urging the USPS to reconsider deployment of SLOCR technology (Ex. 112, WM 003321-22, 8/24/83 Moore letter to Bolger), PMG Bolger esponded in a letter to Moore that "I am concerned that a vendor with

a vested interest is attempting to influence the competitive procurement process of the Postal Service by interfering with our internal decisions." Ex. 113, WM 068363-64, 09/02/83 Bolger letter to Moore; Ex. 11 4, WM 003325-26, 9/09/83 Moore's response to Bolger. This response was actually prepared under the direction of SAPMG Jellison, who confirmed that the USPS was frustrated with Moore's lobbying and media activities. Ex. 86, Jellison Dep. at 74-76, 92-93, 188-90.

100. During their investigation, the Inspectors learned that in 1983, Bolger's deputy, James Jellison, told Robert Reedy, Vice President for Marketing at REI, that REI would not receive any USPS business "while (Jellison) was the head of Postal Service operations." *Recognition Equip*, 725 F. Supp. at 600; Ex. 26, Trial Tr. at 1759. The Postal Service was "upset" and "frustrated" by Moore's and REI's efforts to publicly push for MLOCR technology while the USPS was trying to implement its Zip+4 strategy. Ex. 86, Jellison Dep. at 72-75.

101. The USPS eventually adopted multi-line technology for automated mailing sorting. Ex. 40. Moore Aff ¶ 21; Ex. 21, Edwards Dep. at 550.

102. In late 1983, however, Bolger announced that there was no future for multi-line technology in the United States and stated that the USPS would use single-line technology instead. *Id.* ¶ 19.

103. Following Bolger's 1983 announcement that the USPS would use single-line OCR technology, Moore "went public" with his criticisms of the USPS, going to the media and members of Congress. *Id.* ¶¶ 20-22; Ex. 65 Congressional letters (various Bates No. ranges). Moore's lobbying included contacting

members of Congress and testifying before Congressional committees. *Id.*; Ex. 26, Trial Fr. at 1616-1617, 1731, 1734-36. Bolger asked Moore on several occasions to "back off" of his criticisms of USPS management. Ex. 40, Moore Aff. 1 20; Ex. 41, Kormann Dep. at 187-88.

104. In response to REI's congressional and media campaigns, the USPS actively solicited the assistance of ECA—REI's chief rival and a competitor in the OCR race—to wage a counter-campaign against REI in Congress. Ex. 22, McIntosh Dep. at 255-58; Ex. 115, DOJ23 00649-53, 01/26/86 McIntosh notes of Buzard interview at DOJ23 000650; Ex. 24, Hartrnan 4/20/00 Dep. at 233-35.

105. The issue of multi-line versus single-line technology "was not simply a formal procurement issue within the USPS but was a subject of significant public debate involving executive studies, legislative inquiries and broad media exposure." *Recognition Equip.*, 725 F. Supp. at 590. It fact, on October 23, 1985, Congressman English expressed dissatisfaction regarding USPS' handling of the OCR situation, and during a public hearing stated that USPS had "screwed up" and that "unless we have somebody's hide nailed to the barn door" the situation would not get any better. Ex. 116, SMFC4 07521-32, Transcript of 10/23/85 Congressional hearing at 07524 and 07526.

106. In June 1984, the Office of Technology Assessment ("OTA") and the General Accounting Office ("GAO") presented their respective analyses of the automation issue to Congress. "The GAI and OTA studies that were presented to Congress concluded that as a result of the USPS failure to convert to multiline technology the daily operational losses of the USPS

were over one' milion dollars." *Recognition Equip.*, 725 F. Supp. at 590. In addition, the OTA report recommended that a split procurement of MLOCRs and SLOCRs proceed on a dual track as the most appropriate course of action for automating the USPS. Ex. 23, 002653-778, 1984 OTA Report at 002664.

107. Throughout 1984, 1985 and 1986, Moore continued his congressional and media campaigns to win an automation contract for REI. Ex. 40, Moore Aff. ¶¶ 21-22. Moore worked particularly closely with Congressmen Jack Brooks and Martin Frost, but also lobbied the USPS BOG as well. *Id.*; Ex. 67, WM 004798-99, 7/02/84 Moore letter to BOG. In addition, Moore worked with Representative Frost to draft a "Buy American" amendment (a/k/a the "Frost Amendment") to a USPS appropriations bill that, if passed, would have enabled REI to secure a contract for MLOCRs. Ex. 40, Moore Aff. ¶ 21; Ex. 35, SMFC4 00004-147, "Details of Offense" at SMFC4 00072; Ex. 36, SMFC3 09861-64, "Arguments for Indicting the Corporation" at SMFC 09861.

108. After Paul Carlin became the Postmaster General in January 1985, he met with John Gnau and Michael Marcus to discuss REI and the procurement issue. Ex. 117, SMFC4 11063-70, 3/10/86 Carlin Memorandum Interview at SMFC4 11069. During that meeting, Carlin specifically directed REI and its consultant, GAI, to communicate and deal directly with the Technology Committee of the BOG in connection with REI's case for MLOCRs. *Recognition Equip.*, 725 F. Supp. at 591; Ex. 41, Kormann Dep. at 387; Ex. 26, Trial Tr. at 345 (Gnau testimony). The inspectors were aware of this fact during their investigation. Ex. 41, Kormann Dep. at 387; Ex. 22, McIntosh Dep. at 339,

351-52; Ex. 118, WM 007018-29, McIntosh notes of 8/01/86 Marcus interview at WM 007023 ("[Paul Carlin] suggested using Technology and Development Committee as avenue").

109. As early as March 1985, USPS management was aware of Spartin's affiliation with GAI and that Spartin was in fact the president of GAI. *Recognition Equip.*, 725 F. Supp. at 597-98. On March 12, 1985, Marcus sent a letter to Deputy PMG Jackie Strange on GAI letterhead with Spartin's name shown in red ink as the President of GAI. Ex. 119, WM 004819- 20, 3/12/85 Letter from Marcus to Strange; Ex. 26, Trial Tr. at 727-28, 730-31, 2998, 3185-86. This letter was circulated to other senior USPS management, as well as to various members of the Board of Governors. Ex. 26, Trial Tr. at 3177; *Recognition Equip.*, 725 F. Supp. at 597.

110. On July 12, 1985, PMG Carlin announced a "mid-course correction" in which the USPS changed its strategy for automation from SLOCRs to MLOCRs. Ex. 120, WM 069919-22, 7/14/85 Memorandum from Carlin to BOG.

111. The mid-course correction was viewed by members of the BOG as a "sensible decision in the face of advancing technology." In addition, while there was some disagreement within the BOG over whether a sole source contract should be awarded to any vendor, none of the BOG members expressed any resistance to the mid-course correction. Ex. 121, SMFC4 10363-72, 12/06/85 William Sullivan Interview Memorandum at SMFC4 10364.

112. Similar to REI, ECA had its own consultants with inside ties to USPS management and

members of the BOG. In the Fall of 1985, for example, ECA retained the consulting firm of Nofziger-Bragg, who offered ECA advice on postal procurement matters and political strategy. Ex. 122, SMFC4 10673-84, 4/22/86 Mark Bragg Interview Memorandum at SMFC4 10674; Ex. 26, Trial Tr. at 2295-303, 2304, 2307-08, 2310. Lynn Nofziger, a principal at Nofziger-Bragg, recommended Voss for an ambassadorship to Nigeria. Ex. 122, SMFC4 10673-84, 4/22/86 Bragg Interview Memorandum at SMFC4 10682.

113. During their investigation, the Inspectors were aware that ECA's consultants were actively lobbying USPS management and BOG members behind the scene, including Voss, Peters, and McKean. *Id.* at 6; Ex. 123, SMFC4 09862-78, 4/30/86 Ruth Peters Interview Memorandum at SMFC4 09877; Ex. 22, McIntosh Dep. at 254-55; Ex. 124, DOJ23 000642-48, 01/21/86 Buzard Interview Notes at 000646 ("[ECA] hired a consulting firm in October"); Ex. 125, USA-102-0101, 1/03/85 Memorandum to Carlin re: Ray Schmidt's request to meet: Ex. 126, USA-002-0105-07, USA-002-011, 1/30/85 Carlin letters to Peter Meinig and Bob Buzard.

114. The Inspectors were aware during their investigation that there were several members of the BOG, in addition to Voss, that favored multi-line technology over SLOCRs. Ex. 127, USA-015-0134-35, Memorandum regarding George Camp's public support of MLOCRs; Ex. 128, USA-015-0140, McIntosh notes of 6/04/86 Sharon Coruzzi interview; Ex. 4, SMFCI 07802-06, 4/15, 85 BOG Meeting Tr.; Ex. 129, SMFC4 10346-49, 12/03/85 Camp Interview Memorandum at 10346-47; Ex. 130, SMFC4 10500-04, 1/08/86 Gordon Morrison Interview Memorandum at SMFC4 10501; Ex. 123,

SMFC4 09862-78, 4/30/86 Peters Interview Memorandum at SMFC4 09864-68.

REI's Contract With Gnau & Associates, Inc.

115. On or around September 3, 1984, Voss met with Reedy at the Mansion restaurant in Dallas, Texas. *Recognition Equip.*, 725 F. Supp. at 590; Ex. 4 7, DOJ4 0013891400, 3/9-11/88 Voss Interview Memorandum at DOJ4 0001390; Ex. 50, SMFC3 00236-50 7/25/86 Reedy Interview Memorandum at SMFC3 00237.

116. As a member of the USPS Board of Governors, Voss had been appointed by the President of the United States and confirmed by the United States Senate. *Recognition Equip.*, 725 F. Supp. at 590.

117. The Inspectors were told by Voss that the dinner with Reedy at the Mansion was Voss's suggestion in order to apologize for the fact that the BOG Technology Committee had canceled at the last minute its scheduled visit to tour REI's facility. Ex. 47, DOJ4 001389-1400, 3/9-11/88 Voss Interview Memorandum at DOJ4 001390; Ex. 123, SMFC4 09862-78, 4/30/86 Peters Interview Memorandum at SMFC4 09864.

118. During the meeting between Voss and Reedy at the Mansion, Voss told Reedy that he believed REI had a good product and that, in the interests of the USPS, he wished that REI would retain someone to aid them in packaging and presenting their product to the USPS. *Recognition Equip.*, 725 F. Supp. at 590; Ex. 47, DOJ4 001389-1400, 3/9-11/88 Voss Interview Memorandum at D0J4 001390-92; Ex. 50. SMFC3 0023650, 7/25/86 Reedy Interview Memorandum at SMFC3 00240.

119. The Inspectors were told by Voss that, in response to Reedy's question to Voss about how REI could most effectively make a presentation to the BOG, Voss told Reedy that he (Voss) was capable of making the proper presentation, but could not do so because he was a member of the BOG. Voss also told the Inspectors that he informed Reedy during the Mansion dinner that "[he] felt it would be inappropriate to make such a presentation on behalf of a vendor." *Recognition Equip.* at 590; Ex. 47. DOJ4 00138-1400, 3/9-11/88 Voss Interview Memorandum at DOJ4 00:390; Ex. 35, SMFC4 00004-117, "Details of Offense" at SMFC4 00038.

120. According to Voss, Reedy told Voss during the Mansion dinner that REI was represented by Hill & Knowlton, to which Voss replied that REI needed someone "lower key and less emotional." Ex. 47, DOJ4 001389-1400, 3/9-11/88 Voss Interview Memorandum at DOJ4 001390; Ex. 50, SMFC3 00236-50, 7/25/86 Reedy Interview Memorandum at SMFC3 00237; Ex. 41., Kormann Dep. at 795-96. "Voss was very hesitant to give names of any company [because it] wasn't his place to do so." *Recognition Equip.*, 725 F. Supp. at 590. Voss told the inspectors that he suggested three different entities: GAI , Grey & Company and Nofziger-Bragg, Inc., and it was only after Reedy asked Voss which one REI should choose that Voss indicated GAI. Ex. 47, DOJ414 001389-1400, 3/9-11/88 Voss Interview Memorandum at DOJ4 001390-91; Ex. 131, SMFC4 10751-71, 5/09/86 Voss Interview Memorandum at SMFC4 1075455; Ex. 41, Kormann Dep. at 789-90, 795-96.

121. "The government [had] no evidence of the impropriety of a Governor having lunch with an officer

of a company who was seeking to do business with the USPS." *Recognition Equip.*, 725 F. Supp. at 590.

122. Prior to his meeting with Reedy at the Mansion restaurant in September 1984, Voss was a proponent of multi-line OCR technology. Ex. 132, SMFC3 08908, 6/29/84 Voss letter to Congressman Jack Brooks re: support for MLOCR (transcribed by Inspectors); Ex. 35, SMFC4 00004-147, "Details of Offense" at SMFC4 00006 ("In June 1984, Voss informed Congressmen Martin Frost and Jack Brooks of his support for the USPS purchase of MLOCRs from REI."); Ex. 133, SMFC3 02754-71, 3/03/87 Hartman memo to file of "REI Interviews" at SFMC3 02757 (Voss contacts Congressman Frost's office) and 02761 (Voss contacts Congressman Brooks' office); Ex. 134, SMFC3 06930-86, Inspectors' summary of Voss' interviews at SMFC3 06938. In fact, "[s]everal months prior to the tine that Voss met with REI, he had publicly expressed caution in proceeding with singleline technology before studies ordered by Congress on the mutiline/singleline debate were completed." *Recognition Equip.*, 725 F. Supp. at 590; Ex. 26, Trial Tr. at 1583.

123. Despite Voss' recommendation of GAI in September 1984, REI did not actually retain GAI until many months later. REI saw no need to rush into a new consulting relationship when the political climate in Washington, D.C. was uncertain and a new PMG was coming into office in January 1985. *Recognition Equip.*, 725 F. Supp. at 590-91; Ex. 49, Moore Dep. at 210-11; Ex. 41, Kormann Dep. at 789-90, 795-96; Ex. 26, Trial Tr. at 1618-19; Ex. 50, SMFC3 00236-50, 7/25/86 Reedy Interview Memorandum at SMFC3 00239-40.

124. "In apparent frustration over [REI's] delay in signing an agreement and [REI's] failure to

return his telephone calls, Gnau did not complain to [Moore or REI], but instead complained to Voss." *Recognition Equip.*, 725 F. Supp. at 591; Ex. 26, Trial Tr. at 645, 293, 307.

125. The contract between REI and GAI was not executed until late February 1985. Ex. 42, DOJ38 000039-43, USA-028-0036-40, 2/85 REI/GAI consulting contract; *Recognition Equip.*, 725 F. Supp. at 591. The contract was dated "as of" January 15, 1985 to reflect the fact that GAI had actually begun its consulting work in January 1985, and the "15th" reflected the payment schedule for the retainer as set forth in the consulting contract. *Id.*; Ex. 26, Trial Tr. at 358.

126. Pursuant to the terms of the consulting agreement, REI agreed to pay GAI's standard fee of $30,000, payable in three equal monthly installments on the 15th of each month. Ex. 22, McIntosh Dep. at 353-58; Ex. 135, WM 006987-7003, Inspector's notes of 7/31/86 Marcus interview, at WM 007000; Ex. 77, WM 007030-137, Inspectors' notes of 8/05/86 Marcus interview at WM 007054. In addition, REI negotiated a contingency fee of 1% of the value of any contracts received from the USPS, which was one-half of the fee that GAI had originally proposed. Ex. 42, DOJ38 000039-43, USA-028-003640, 2/85 REI/GAI consulting contract; Ex. 26, Trial Tr at 1624-25.

127. REI's contract with GAI was not kept a secret. In fact, members of REI's Board of Directors were aware of the contract at the time that it was negotiated and signed. Ex. 136, SMFC3 02514-25, Inspectors' notes of 12/03/87 Runnion interview at SMFC3 02514; Ex. 137, SMFC3 02722-42, Inspectors' notes of 2/19/87 Sheinberg interview at SFMC3 02737; Ex. 41, Kormann Dep. at 295-96, 298-99, 325. They

were also aware that GAI's contract was subsequently renegotiated. Ex. 41, Konnann Dep. at 303-04, 325.

128. At the time that REI began dealing with GAI, "GAI was a capable firm which presented a respectable client list to REI which included Ford Aerospace, Continental Airlines and Warner Amex Cable Communications, Inc." *Recognition Equip.*, 725 F. Supp. at 592; Ex. 26, Trial Tr. at 620. "Moreover, prior to REI's entering into an agreement, Bray reported to Reedy that GAI's technical man, Marcus, was extremely conversant with the issues of OCR technology." *Recognition Equip.*, 725 F. Supp. at 592; Ex. 26, Trial Tr. at 1623. GAI, with the support of Voss, also was able to schedule a meeting with Carlin in early January 1985 to discuss REI and the procurement issue. Ex. 117, SMFC4 11063-70, 3/10/86 Carlin Memorandum Interview at SMFC4 11069.

129. Contingency fees were a standard fee arrangement in the consulting business, and GAI had contingency fee agreements with up front retainers with most of its clients. Ex. 26, Trial Tr. at 231, 705-07; Ex. 138, SMFC3 03638, 3/08/88 Grand Jury Tr. (testimony of Robert Drury, REI Corporate Controller) ("We [REI] do enter into contingent-fee contracts as a regular course of business . . ."); Ex.l39, SMFC3 03961-62, 3/15/88 Grand Jury Tr. (testimony of George O'Brien, V.P. and Chief Financial Officer of REI); Ex. 22, McIntosh Dep. at 333-34. Even the USPS legal department concluded that REI's contingency fee with GAI was not necessarily improper under postal service regulations. Ex. 140, WM 003653-60, 6/11/86 USPS internal legal opinion re: REI contingent fee.

130. The written contract between REI and GAI strictly forbade GAI from engaging in any illegal

activity as part of the consulting work for REI. Ex. 42, DOJ38 000039-43, USA-028-0036-40, 2/85 REI/GAI consulting contract.

131. Noone at REI was told to keep the fact of the Voss/Reedy meeting at the Mansion restaurant or the referral of GAI to REI a secret. *Recognition Equip.*, 725 F. Supp. at 593; Ex. 26, Trial Tr. at 1614-15. In fact, several members of REI's Board of Directors and senior management, including Israel Sheinberg and George O'Brien, were aware that GAI had been recommended by Voss and that REI had entered into a consulting agreement with GAI. *Recognition Equip.*, 725 F. Supp. at 593; Ex. 26, Trial Tr. at 3815-17; Ex. 137, SMFC3 02722-42, Inspectors' notes of 2/19/87 Sheinberg interview at 02725 and 02735; Ex. 141, SMFC3 02681-90, Inspectors' notes of 1/28/87 O'Brien interview at SMFC3 02689.

132. The process by which the GAI/REI contract was formed was an "entirely normal process." *Recognition Equip.*, 725 F. Supp. at 593.

The Voss/Gnau Conspiracy

133. "Voss and Gnau had a criminal venture in place before Voss approached REI with the proposal that REI hire the services of Gnau." *Recognition Equip.*, 725 F. Supp. at 589; Ex. 44, SMFC4 10974-97, 8/05-06/86 Marcus Interview Memorandum at SMFC4 1097982; Ex. 39, DOJ23 001681-702 Gnau Statement at DOJ23 001682-74, 001688.

134. "Voss and Gnau had established a scheme whereby Gnau would send checks in the name of Decisions Systems, Inc., for 'industrial leads' or referrals to GAI." *Recognition Equip.*, 725 F. Supp. at 590; Ex. 26, Trial Tr. at 621-22; Ex. 39, D0123 001681-702, Gnau

Statement. Gnau's payments to Voss were made to Decisions Systems in order to conceal the payment scheme to which Voss and Gnau had agreed. Ex. 39, DOJ23 001681-702, Gnau Statement at DOJ23 001684; Ex. 4, SMFCI 07802-06, 4/15/84 Agreement between Gnau and Decision Systems; Ex. 22 McIntosh Dep. at 342-43.

135. "Prior to the time that Voss had approached REI, Voss and Gnau had targeted several companies for whom GAI could provide postal-related representation and use Voss' USPS connection for their benefit." *Recognition Equip.*, 725 F. Supp. at 590; Ex. 39, DOJ23 001681-702, Gnau Statement at DOJ23 001681-87.

136. The Inspectors had no evidence that Moore, Reedy or REI knew about Gnau's criminal scheme with Voss. *Recognition Equip.*, 725 F. Supp. at 590. In fact, none of the conspirators involved n the kickback scheme ever told Moore or anyone else at REI that payments were being made to Voss. Ex. 21, Edwards Dep. at 119-20, 526; Ex. 24, Hartman 5/07/98 Dep. at 132, 134-36, 249; Ex. 41, Kormann Dep. at 132-34, 136, 37; 507-08, 580; 591 94, 794; Ex. 22, McIntosh Dep. at 185-86. In this respect, Voss himself told the Inspectors and Valder that there was "no way Moore knew" anything improper was being done. Ex. 142, DOJ3 001244, 03/08/88 Knight memo regarding Peter Voss Interview with Valder's handwritten notes

Carlin's Dismissal and Replacement as Postmaster General

137. Paul Carlin became the Postmaster General of the USPS on January 1, 1985. Ex. 35, SMFC4 00004-147, "Details of Offense" at SMFC4 000044.

138. Like every other Postmaster General, Carlin was appointed by the Board of Governors and served at the will of the BOG. Ex. 26, Trial Tr. at 2197; Ex. 41, Kormann Dep. at 369-70.

139. On January 6, 1986, the BOG voted unanimously to terminate Carlin as Postmaster General because they were not satisfied with his performance. *Recognition Equip.*, 725 F. Supp. at 599; Ex. 26, Trial Tr. at 2979-80, 2988, 2991; Ex. 143, SMFC1 15050-51, 1/06/86 BOG Meeting Minutes; Ex. 24, Hartman 5/07/98 Dep. at 114-15 and 4/20/00 Dep. at 45; Ex. 41, Kormann Dep. at 362.

140. The Inspectors had no evidence that Moore or anyone else at REI exercised any influence over any members of the BOG to cause them to vote for Carlin's removal. *Recognition Equip.*, 725 F. Supp. at 599. In fact, Inspector Kormann admitted that, as far as he knew, Moore had no involvement with the removal of any USPS personnel. Ex. 41, Kormann Dep. at 369. Similarly, there was no evidence that Spartin played any role in either Carlin's removal or the removal of any other USPS management personnel. Ex. 26, Trial Tr. at 2758-59, 2764.

141. Prior to Carlin's termination as Postmaster General, various members of the BOG were unhappy with Carlin's performance. Ex. 144, WM 004903-04, 11/27/85 Peters letter to Carlin. In fact, as early as August 1985, John McKean, the Chairman of the BOG, began considering Carlin's removal because Carlin was not effectively leading the USPS and was exhibiting poor management style. Ex. 145, SFMC4 10741-49, Si07186 McKean Interview Memorandum at SMFC4 10741-42; Ex. 24, Hartman 4/20/00 Dep. at 150; Ex. 41, Konnann Dep. at 370-71, 772; Ex. 146, WM 009054-55,

Inspector's notes of 7/22/86 Spartin interview at WM 009055.

142. In August 1985, McKean approved the activation of the BOG Contingency Committee to search for Carlin's replacement. Ex. 145, SMFC4 10741-49, 5/07/86 McKean interview Memorandum; Ex. 146, WM 009054-55, Inspector's notes of 7/22/86 Spartin interview at 009055. Voss recommended Spartin to conduct the search, but it was actually McKean who initially approached Spartin about the search for a new PMG. *Id.*; Ex. 26, Trial Tr. at 2694-95. McKean told Spartin that Carlin was not fulfilling his responsibilities as PMG and that Carlin was not up to the job of being the PMG. Ex. 26, Trial Tr. at 2646-47.

143. On December 2, 1985, the BOG met to discuss their dissatisfaction with Carlin's performance as PMG. Ex. 26, Trial Tr. at 2927-28. Following this meeting, certain BOG members, including Chairman McKean, Gerald Ryan and Peter Voss, met with Carlin concerning his job performance. Ryan acted as the spokesperson during this meeting and told Carlin that he had been "wounded" in his position as Postmaster General in dealing with the BOG and USPS management. Ex. 145, SMFC4 10741-49, 05/07/86 McKean Interview Memorandum at SMFC4 101743; Ex., 26, Trial Tr. at 2929-31; *Recognition Equip.*, 725 F. Supp. at 599.

144. In addition to the BOG's view that Carlin was an ineffective PMG, members of senior management at the USPS were also critical of Carlin's performance. Ex. 35, SMFC4 00004-147, "Details of Offense" at SMFC4 00138; Ex. 26, Trial Tr. at 2200-01, 2694-95; Ex. 41, Kormann Dep. at 362-63, 370, 772. For example, Associate Postmaster General Jackie Strange

and other Regional Postmaster Generals were unhappy with Carlin's performance as Postmaster General. Ex. 26, Trial Tr. at 2473, 2930-31; Ex. 145. ST4FC4 10741-49, 05/07/86 McKean Interview Memorandum at SMFC4 10744. James Jellison, the SAPMG of Operations, thought Carlin "did a terrible job" as PMG and told the postal Inspectors that he believed that Carlin was ineffective and did not deserve to be Postmaster General. Ex. 86, Jellison Dep. at 172-75.

145. Inspector Edwards admitted that "Carlin was not viewed as a particularly strong Postmaster General. . . . So I think there was some sigh of relief [when he was fired] in the sense that they felt like that whatever happened that you wouldn't have somebody who would make one decision and then sort of unmake it, I mean, that you'd get a stronger element." Ex. 21, Edwards Dep. at 185-86.

146. Moore was not aware that the BOG was considering replacing Carlin and/or that Spartin had the search contract for Carlin's replacement until December 1985 when Spartin contacted Moore requesting possible candidates for postmaster general. Ex. 40, Moore Aff. ¶ 24; Ex. 109, DOJ28 000183A-229, 9/01/87 Spartin Grand Jury at 27-28; Ex. 26, Trial Tr. at 2700; Ex. 147, WM 009032-34, 8/04/87 McIntosh notes of Spartin interview at WM 009033 ("Spartin never showed the [Carlin gallows] letter to REI"). Moore's reaction was one of surprise and being "floored" when he learned the news that Carlin was possibly going to be replaced. Ex. 49, Moore Dep. at 245-46.

147. In response to Spartin's inquiry about possible PMG candidates, Moore provided Spartin with the names of three preeminent American businessmen: John Lawrence, Chester Nimitz, and Albert Casey.

Moore did not, however, recommend any particular candidate over any other candidate. Ex. 22, McIntosh Dep. at 322. Moreover, as was his standard practice when suggesting anyone for any position, Moore also told Spartin that if he wanted to contact any of these possible candidates, Spartin should let Moore know so that Moore could make a courtesy call to let these candidate know that Spartin would be contacting him. Moore did eventually—albeit reluctantly—contact Casey at Spartin's request to see if Casey would take Spartin's call. Ex. 148, WM 010315-23, 3/20/86 Casey Interview Memorandum at WM 010315; Ex. 49, Moore Dep. at 250, 256-59; *Recognition Equip.*, 725 F. Supp. at 600; Ex. 26, Trial Tr. at 2705; Ex. 52, Spartin Polygraph at 27.

148. Moore did not keep his recommendation of Casey, Nimitz and Lawrence a secret. In fact, he informed various members of the REI Board of Directors that the recommendations had been made. Ex. 136, SMFC3 02514-25, Inspectors' notes of 12/03/87 Runnion interview at SMF C3 02515; Ex. 149, SMFC3 02538-51, Inspector's Notes of 12/03/87 Seay interview at SFMC3 D2540; Ex. 137, SMFC3 02722-420, Inspectors' notes of 2/19/87 Sheinberg interview at SMFC3 02723, 02738; Ex. 41, Kormann Dep. at 296-98, 301, 307-08, 313, 326.

149. In addition to Moore's suggestion of Casey as a possible candidate for PMG, the Inspectors were also aware during their investigation that certain government officials had also recommended Casey for PMG. For example, Carla Hills, who was then the U.S. Trade Representative, recommended Casey's name to certain members of Congress, as well as to Donald Regan, the White House Chief of Staff in the Reagan Administration. Ex. 22, McIntosh Dep. at 262-63; 276-

77; 3 11; Ex. 150, SMFC4 10582-84, 4/02/86 Hills Interview Memorandum at 10583.

150. On January 6, 1986, the BOG voted unanimously to approve the appointment of Albert V. Casey as the new PMG. Ex. 35, SMFC4 00004-147, "Details of Offense at SMFC4 00105; Ex. 24, Hartman 05/07/98 Dep. at 223-25. "[T]he Board of Governors was pleased with the recommendation of Casey and acted quickly to appoint him by a unanimous decision." *Recognition Equip.*, 725 F. Supp. at 600; Ex. 26, Trial Tr. at 2503.

151. The Inpectors had no evidence that Moore or anyone else at REI exercised any influence over any members of the BOG to cause them to vote for Casey as the new Postmaster General. Nor was there any evidence "that Moore had any reason to believe the Board of Governors, which had the responsibility for appointing the PMG, would not exercise its responsibility independently." *Recognition Equip.*, 725 F. Supp. at 600.

152. "Carlin [was] fired for reasons independent of the [Voss/Gnau] conspiracy and by individuals other than the coconspirators." *Recognition Equip.*, 725 F. Supp. at 599.

The Investigation of Moore and REI

153. United States Postal Inspectors report to USPS management. *Moore v. Valder*, 65 F.3d 189, 196 (D.C Cir. 1995), cert. denied, 117 S. Ct. 75 (1996); Ex. 21, Edwards Dep. at 349; Ex. 24, Hartman 5/07/98 Dep. at 188-91.

154. The postal Inspectors who participated in the investigation of Moore and REI included, among others, Inspectors Hartman, Kormann, Edwards, Har-

rington, McIntosh and Robbins. From at least mid-1986 through the completion of the criminal trial, Hartman and Kormann played lead roles on the investigation team. Ex. 24, Hartman 5/07/98 Dep. at 17-18, 96-97, 173; Ex. 41, Kormann Dep. at 20-21, 23, 120-21, 138-39; Ex. 21, Edwards Dep. at 342-43, 500-01; Ex. 22, McIntosh Dep. at 151-52, 154-56; Ex. 100, Robbins Dep. at 24.

155. Unlike other cases that they had worked on, the Inspectors reported directly to Chief Postal Inspector Charles Clauson in connection with their investigation of Moore and REI. Ex. 24, Hartman 5/07/98 Dep. at 89, 193-96, 197; Ex. 21, Edwards Dep. at 3233; Ex. 20, Clauson Dep. at 131-32; Ex. 151, 10/10/96 Declaration of Charles Clauson, 15; Ex. 152, SMFC3 004916-28, 8/04/89 "Personal" note from Inspectors to Clauson re: status of REI case.

156. The Inspectors had an unlimited budget in connection with their investigation of Moore and REI. Ex. 24, Hartman 5/08/98 Dep. at 347; Ex. 21, Edwards; Dep. at 29.

157. Over 200 grand jury subpoenas were issued in the criminal case against Moore. Ex. 24, Hartman 7/07/00 Dep. at 28; Ex. 41, Kormann Dep. at 105; Ex. 105, Valder Dep. at 596-97; Ex. 91, SMFC3 13144-78, Inspectors' subpoena service and compliance report (master list). The Inspector drafted and prepared the subpoenas on behalf of the U.S. Attorney's office. Ex. 24, Hartman 7/07/00 Dep. at 31-32; Ex. 105, Valder Dep. at 77-78.

158. During their investigation, the Inspectors subpoenaed records from REI relating to, among other things, "the arrangement of interviews with journalists

and reporters," "meetings with United States Congressmen," "meetings with or regarding the REI Political Action Committee," "a summary of all contributions to candidates and or holders of public office," "authorization for individual PAC disbursements," and "disbursement of PAC funds to include the contributors' and payees' name." Ex. 153, Subpoena dated 7/24/86 for REI PAC contributions (SMFC3 09279-82) and 2/09/87 re: REI political activities (SMFC3 09157-59).

159. The key issue during the investigation of Moore and REI was whether they had any knowledge about the kickback scheme between Voss and Gnau. Ex. 41, Kormann Dep. at 132, 497; Ex. 154, SMTC3 01869-73, 04/13/87 Kormann notes of conference call to Ellen Huvelle at SWC3 01869-70.

160. During their investigation, the Postal Inspectors had no direct evidence that Moore or anyone else at REI was aware of payment scheme between Gnau and Voss. *Recognition Equip.*, 725 F. Supp. at 596; Ex. 41, Kormann Dep. at 136-37; Ex. 105, Valder Dep. at 425-26, 629.

161. "All of the unindicted co-conspirators who testified at [Moore's criminal] trial expressly stated that they never told Moore or Reedy about the payments from Gnau to Voss." *Recognition Equip.*, 725 F. Supp. at 596. *See also* Ex. 41, Kormann Dep. at 132-36; Ex. 24, Hartman 05/08/98 Dep. at 415; Ex. 36, SMFC3 09861-64, Arguments for Indicting the Corporation" at SMFC3 09863, ¶ 1b. John Gnau, for example, testified that he never told Moore, Reedy, or anyone else at REI about the payment scheme. Ex. 26, Trial Tr. at 306, 405, 562, 583; see also Ex. 155, DOJ23 001808-18, Kormann notes of 10/09/86 Gnau interview at DOJ23 001816 ("JG did not tell Reedy about JG payments to PV").

William Spartin, Michael Marcus and Sharon Peterson similarly testified that they did not tell Moore or anyone at REI about the payment scheme between Gnau and Voss. Ex. 26, Trial Tr. at 817, 2049, 2657, 2706.

162. In addition to the fact that none of the participants in the Voss/Gnau payment scheme ever told Moore or anyone else at REI about the payments to Voss, the Inspectors learned during their investigation that Gnau and Voss were concealing other information from REI as well. For example, Gnau concealed the fact that it was Voss—and not Gnau—who arranged for GAI to meet with Paul Carlin in early January 1985 in order to impress REI with Gnau's abilities to get the job done. *Recognition Equip.*, 725 F. Supp. at 591; Ex. 26, Trial Tr. at 655-57, 704. Similarly, Gnau concealed the disappointing results of his meeting with Carlin in January 1985 and instead tried to persuade REI that an OCR contract could be secured in 90-120 days. *Recognition Equip.*, 725 F. Supp. at 591. And when Moore, Reedy, and Bray confronted Gnau in April/May 1986 about whether he had done anything illegal with Voss, Gnau expressly denied any wrongdoing or making any payments to Voss and covered up his actions in an effort to shield the fact that Voss was "on the payroll" and to keep GAI's contract with REI in place. Ex. 26, Trial Tr. at 561-62, 691, 769, 1807.

163. Peter Voss was a central figure in the conspiracy scheme relating to the OCR procurement matters. The government, however, did not call Voss to testify against Moore or REI at the criminal trial. *Recognition Equip.*, 725 F. Supp. at 593-94; Ex. 24, Hartman Dep. at 133.

164. During their investigation, the Inspectors were repeatedly told by Voss, Gnau, Spartin, Marcus

and Peterson that none of them ever told Moore or anyone else at REI about the payment scheme between Gnau and Voss. Ex. 24, Hartman 5/07/98 Dep. at 132, 134-36, 249, 254-59, 269,5/0 3/98 Dep. at 535-36 and 4/20/00 Dep. at 239-41; Ex. 41, Kormann Dep. at 132-36, 516-19, 576, 580, 583, 590-607, 794; Ex. 21, Edwards Dep. at 119-20, 526; Ex. 22, McIntosh Dep. at 185-86 Ex. 26, Trial Tr. at 306, 405, 562, 583, 817, 2657-60, 2706, 2718-19; Ex. 52, Spartin Polygraph; Ex. 156, SMFC4 10782-96, 5/15/86 Peterson Interview, Memorandum at SMFC4 10791; Ex. 36, SMFC3 09861-64, "Arguments for Indicting the Corporation" at SMFC3 09863, ¶ 1b.

165. During their investigation, the Inspectors interviewed Spartin more than 20 times between March 1986 and September 1987. Ex. 26, Trial Tr. at 2590-2607. During these interviews, Spartin repeatedly told the Inspectors that he had never told anyone at REI about the payments to Voss and that he was not aware of anyone else ever telling anyone at REI about the payment scheme. *Id.* at 2657-60, 2718-19.

166. As part of the grand jury investigation, the Inspectors prepared witness statements for Frank Bray, Willian Spartin, Sharon Peterson, Peter Voss, John Gnau and Michael Marcus that were presented to the grand jury as part of each respective witness's testimony. Ex. 157, 10/16/86 (DOJ29 000496-511) and 11/17/87 (WM 002619-26) Gnau Grand Jury Tr. at DOJ29 000501-02; Ex. 55, SMFC3 06614-30, 9/19/86 Peterson Grand Jury Tr. at SMFC3 06621-22; Ex. 158, WM 016678-92, 8/28/86 Voss Grand Jury Tr. at WM 016684-86; Ex. 159, 4/25/86 (WM 004171-77), 10/23/86 (WM 004178-90), and 11/17/87 (WM 003816-21) Grand Jury Tr. (Marcus) at WM 004184-85; Ex. 109, DOJ 28 000183A-229, 9/01/87 Grand Jury Tr. (Spartin) at DOJ28

000188; Ex. 78, SMFC3 01414-526, 7/16/87 Grand Jury Tr. (Bray) at SMFC3 01419-20; Ex. 41, Kormann Dep. at 101, 494, 563-64. The Inspectors understood at the time these statements were prepared that the statements would be presented to the grand jury as part of the witnesses' testimony. Ex. 41, Kormann Dep. at 569-71; Ex. 24, Hartman 05/07/98 Dep. at 241, 244-47.

167. Inspectors Hartman and Kormann specifically discussed and agreed with Valder that witness statements should be prepared and presented to the grand jury. Ex. 41, Kormann Dep. at 519-21. In addition, it was common knowledge among the Inspectors working on the case that witness statements were being prepared for presentation to the grand jury. *Id.* at 520.

168. Prior to their participation in the Moore investigation, none of the Inspectors had ever been involved in a case where witness statements were prepared by the postal Inspectors and presented to the grand jury. Similarly, none of the Inspectors participated in any case after the Moore investigation where witness statements were prepared and presented to the grand jury. Ex. 24 Hartman 5/07/98 Dep. at 272-73; Ex. 41, Kormann Dep. at 520; Ex. 21, Edwards Dep. at 139. 373-77; Ex. 26, Trial Tr. at 3478-79 (Harrington testimony).

169. Inspectors Hartman and Kormann decided what information would be put into the drafts of the witnesses' grand jury statements and what information would be left out. Ex. 24, Hartman 05/07/98 Dep. at 262; Ex. 26, Trial Tr. at 3779.

170. None of the witness statements that were prepared by the Inspectors and presented to the grand

jury contained any statement to the effect that neither Moore nor anyone else at REI had been told about the payment scheme between Gnau and Voss. Ex. 41, Kormann Dep. at 491-99, 509, 516-19, 522-26, 590-607; Ex. 24, Hartman 5/07/98 Dep. at 248-50, 264-69; Ex. 39, DOJ23 001681-702, Gnau Statement; Ex. 106, DOJ28 000155-82, Spartin Statement; Ex. 160, SMFC3 13669-87, 10163-201, Grand Jury "Statement of Peter Voss" (hereafter "Voss Statement"); Ex. 161, SMFC3 13865-76, Grand Jury "Statement of Sharon Peterson" (hereafter "Peterson Statement"); Ex. 69, SMFC3 10034-57, Marcus Grand Jury Summary; Ex. 162, SMFC3 02048-71, Grand Jury "Statement of Frank Bray" (hereafter "Bray Statement"). Instead, each of the statements intentionally omitted this exculpatory information.

171. Neither Voss, Gnau, Marcus, Spartin nor Peterson was asked any questions during their grand jury testimony to elicit the fact that none of them had told either Moore or anyone else at REI about the payment scheme between Voss and Gnau. Ex. 158, WM 016678-92, 8/28/88 Voss Grand Jury Tr.; Ex. 157, 10/16/86 (DOJ29 000496-511) and 11/17/87 (WM 002619-26) Gnau (Grand Jury Tr.; Ex. 159, 4/24/86 (WM 004171-77), 10/23/86 (WM 004178-90), and 11/17/87 (WM 003816-21) Marcus Grand Jury Trs.; Ex. 109, DOJ28 000183A-229, 9/01/87 Spartin Grand Jury Tr.; Ex. 55, SMFC3 06614-30, 9/19/86 Peterson Grand Jury Tr.; Ex. 26, Trial Tr. at 2708-09.

172. When Inspector Hartman testified to the grand jury to summarize the "real important pieces of evidence" from the investigation, he never told the grand jury that none of conspirators had told either Moore or anyone else at REI about the payment scheme between Voss and Gnau. Ex. 24, Harman

05/07/98 Dep. at 253-55, 269-271 and 05/08/98 Dep. at 419-20.

173. Valder's and the Inspectors' failure to present the exculpatory evidence from Voss, Gnau, Marcus, Spartin and Peterson was contrary to the policies in existence at the United States Attorney's Office at the time of the grand jury investigation of Moore and REI. The United States Attorney's Manual in existence at that time specifically provided that "[w]hen a prosecutor conducting a Grand Jury inquiry is personally aware of substantial evidence which directly negates the guilt of the subject of the investigation, the prosecutor must present or otherwise disclose such evidence to the Grand Jury before seeking an indictment against such person." See United States Attorney's Manual at § 9-11.2333 (1988).

174. The Inspectors understood at the time of their investigation of Moore and REI that they had an obligation as postal Inspectors to make sure that information that was being prepared for presentation to the grand jury was complete and impartial so that the grand jury could properly decide whether to issue an indictment. Ex. 41, Kormann Dep. at 516; Ex. 24, Hartman 5/07/98 Dep. at 245

175. The Inspectors understood at the time of their investigation of Moore and REI that they had an obligation as postal Inspectors to make sure that relevant evidentiary material was included in the information that was being prepared for presentation to the grand jury. Ex. 41, Kormann Dep. at 517.

176. The Inspectors understood at the time of their investigation of Moore and REI that they had an obligation as postal Inspectors to be fair and impartial

in their preparation of information for presentation to the grand jury. Ex. 41, Kormann Dep. at 516, Ex. 21, Edwards Dep. at 65, 148-49, 320-2; Ex. 24, Hartman 5/07/98 Dep. at 245.

177. The Inspectors understood at the time of their investigation of Moore and REI that it would not be fair to give the grand jury incomplete information about the circumstances relating to the matter under investigation. Ex. 41, Kormann Dep. at 509, 518-19.

178. The Inspectors understood at the time of their investigation of Moore and REI that they had an obligation as postal Inspectors to make sure that relevant evidentiary material was included in any witness statements that were prepared during their investigation. Ex. 41, Kormann Dep. at, 8, 69.

179. The Inspectors understood at the time of their investigation of Moore and REI that a "witness statement" is the statement of the witness and not the statement of the postal Inspectors. The Inspectors also understood that if the witness and the Inspectors disagreed about what the facts should be, the witness's version of the facts was supposed to be contained in the statement. Ex. 41, Kormann Dep. at 69-70, 608-09; Ex. 26, Trial Tr. at 3479, 3492 (Harrington testimony); Ex. 21, Edwards Dep. at 137-38.

180. The Inspectors understood at the time of their investigation of Moore and REI that communicating with members of Congress on matters of public concern is a constitutionally protected right that every citizen enjoys and that citizens cannot be prosecuted for exercising such rights. Ex. 41, Kormann Dep. at 67-68, 178-81; Ex. 24, Hartman 5/08/98 Dep. at 355 and 4/20/00 Dep. at 76-79; Ex. 21, Edwards Dep. at 208-12, 549; Ex.

22, McIntosh Dep. at 148-50; Ex. 100, Robbins Dep. at 96-97.

181. The Inspectors understood at the time of their investigation of Moore and REI that criticizing public officials on matters of public concern is a constitutionally protected right that every citizen enjoys and that citizens cannot be prosecuted for exercising such rights. Ex. 41, Kormann Dep. at 66-67; Ex. 24, Hartman 5/07/98 Dep. at 162-63 and 4/20/00 Dep. at 76-79; Ex. 21, Edwards Dep. at 64 65; Ex. 22, McIntosh Dep. at 149-50, 434-35; Ex. 100, Robbins Dep. at 96-97.

182. The Inspectors understood at the time of their investigation of Moore and REI that that it was a violation of grand jury secrecy rules to share the grand jury testimony and exhibits of one witness with another witness who was going to appear before the grand jury. Ex. 100, Robbins Dep. at 47-48; Ex. 24, Hartman 5/07/98 Dep. at 50-53, 64-65, 178, 311-12 and 5/08/98 Dep. at 453-55, 458-59; Ex. 41, Kormann Dep. at 42-43, 170-72, 543-44; 555-56; Ex. 22, McIntosh Dep. at 127-29; Ex. 21, Edwards Dep. at 59.

183. On April 8, 1986, Inspectors Edwards and Harrington made an unannounced visit to REI for the purpose of serving a grand jury subpoena on the company. Ex. 21, Edwards Dep. at 107-08, 298-99, 303, 484-86; Ex. 26, Trial Tr. at 3468 (Barrington testimony). According to Inspector Edwards, REI was already a focus of the investigation at that point. Ex. 21, Edwards Dep. at 303.

184. Instead of serving the subpoena when they first arrived at REI on April 8, 1986, Edwards and Harrington asked to visit with Frank Bray. They did not disclose to Bray at that time that they were there

to serve a subpoena, but instead proceeded to engage in a "heavyhanded" treatment of Bray, during which Edwards raised his voice and forcefully told Bray that people would be going to jail and that he better "get on the bus" before it leaves the station. Bray did not refuse to answer any of the Inspectors' questions during this interview, and as far as Edwards' was concerned, Bray was being truthful in his responses. Ex. 26, Trial Tr. at 3346, 3348-50, 3363; Ex. 21, Edwards Dep. at 305-18; Ex. 51, SMFC3 00226-29, 4/08/86 Reedy/ Loose Interview Memorandum at SMFC3 00231-34; *Recognition Equip.*, 725 F. Supp. at 595.

185. According to Inspector Harrington, who was the second in command at the Inspection Service and a veteran of thirty-two years, Edwards' treatment of Bray on April 8, 1986 was inappropriate. Ex. 26, Trial Tr. at 3446, 3467; *Recognition Equip.*, 725 F. Supp. at 595.

186. After their meeting with Bray in the morning of April 8, 1986, Edwards and Harrington left REI without having served the grand jury subpoena they had brought with them. They returned later in the day and met with Robert Reedy and Thomas Loose, REI's general counsel, and served the subpoena at that time. During this meeting, Reedy and Loose complained about the "heavy-handed" treatment of Bray earlier in the day and, based on an experience that REI had with the inspection service in the 1970's, charged that the investigation was "a contrivance to set up [REI] because REI was right on the verge of delivering a machine out in Phoenix to be tested . . . So there was a feeling that we were there, in some way, to preclude REI from competing." This led the Inspectors to believe that REI might file suit against the USPS.

Ex. 26, Trial Tr at 3351-53, 3364-65; *Recognition Equip.*, 725 F. Supp. at 595; Ex. 51, SMFC3 00226-29, 4/08/86 Reedy/Loose Interview Memorandum; Ex. 163, SMFC3 0022324, Barrington notes of Reedy/Loose interview; Ex. 21, Edwards Dep. at 108, 277, 317-21, 48586.

187. In the Fall of 1985, the Inspectors learned that Moore had a discussion with William Chapp on October 9, 1985, during which Moore asked Chapp what he (Moore) could do to help the USPS with the OCR procurement. In response, Chapp urged Moore to "get the media and Congressmen off of our (the Postal Service's) back." Ex. 164, SMFC4 10277-78, 1985 Hartman notes of Chapp interview at SMFC4 10278; Ex. 49, Moore Dep. at 299-300; Ex. 165, SMFC4 10437-49, 12/18-19/85 Currie Boswell Interview Memorandum at SMFC4 10447; Ex. 166, SMFC4 10279-86, undated Hartman notes of Chapp Interview; Ex. 24, Hartman 04/20/00 Dep. at 26-34; Ex. 2 , Edwards Dep. at 166-67.

188. On October 24, 1986, AUSA Valder and as many as 10 postal Inspectors, including Edwards, Hartman, Kormann and McIntosh, surrounded Spartin at the U.S. Attorneys' office in a "bizarre" meeting that went from "bad to worse." Ex. 26, Trial Tr. at 2546, 2595-96, 2727-28; Ex. 21, Edwards Dep. at 121-27, 134; Ex. 105, Valder Dep. at 336; Ex. 41, Kormann Dep. at 417, 426; Ex. 24, Hartman 5/07/98 Dep. at 120-25 and 4/20/00 Dep. at 53-54; Ex. 22, McIntosh Dep. at 194. According to Spartin, this was a "terrifying moment." Ex. 26, Trial Tr. at 2595.

189. Prior to their meeting with Spartin on October 24, 1986, Valder met with the postal Inspectors and agreed to a plan in which Valder was going to rip up a copy of Spartin's immunity agreement during the

meeting. Ex. 41, Kormann Dep. at 421, 426; Ex. 24, Hartman Dep. at 124, 148-49; Ex. 22, McIntosh Dep. at 197; Ex. 105, Valder Dep. at 336; Ex. 167, Valder's Answer to Complaint dated 10/22/96. During the actual meeting with Spartin, voices were raised, and Valder did in fact tear up a copy of Spartin's immunity agreement. Ex. 105, Valder Dep. at 336, 338, 342-13; Ex. 41, Kormann Dep. at 426; Ex. 24, Hartman 5/07/98 Dep. at 120-25 and 4/20/00 Dep. at 53-54; Ex. 21, Edwards Dep., at 126-27, 135.

190. According to Inspector Hartmen, the incident of ripping up a copy of Spartin's immunity agreement was a tactic designed to exert some "influence" over Spartin. Ex. 24, Hartman 04/20/00 Dep. at 55-56.

191. Spartin was aware at the time that his immunity agreement was ripped up that Voss had just been sentenced to a four year prison term within the preceding week. Ex. 26, Trial Tr. at 2730.

192. The preplanned incident in which Valder ripped up a copy of Spartin's immunity agreement was not a typical practice of the Inspectors or the prosecutor. In fact, the inspectors had never witnessed or participated in such a tactic either before or after the Moore investigation. Ex. 41, Kormann Dep. at 60, 427-28; Ex. 21, Edwards Dep. at 135; Ex. 24, Hartman 5/07/98 Dep at 145-46; Ex. 22, McIntosh Dep. at 200-01. Valder similarly admitted that the Moore case was the one and only time that he engaged in the tactic of physically ripping up a witness' immunity agreement. Ex. 105, Valder Dep. at 686.

193. At the time of the October 24, 1986 meeting with Spartin, Valder and the Inspectors were

aware that Spartin was suffering from a heart condition and that he had been under psychiatric care for several months. Ex. 52, Spartin Polygraph at 3, 8-11; Ex. 168, SMFCI 19478-517, 9/86 BOG Meeting Tr. at SMFC1 19502-03, 19506-07, (Clauson reported to the BOG in September 1986 that "[w]e're in a very sensitive period of negotiations with several people, some of them keep having heart attacks. . . .").

194. Shortly after the meeting on October 24, 1986, Spartin was shown the grand jury statement of his coconspirators that had been scripted by the Postal Inspectors and previously presented to the grand jury as part of the witnesses' testimony. Ex. 26, Trial Tr. at 2550-54, 2561, 2609 2727-37; Ex. 41, Kormann Dep. at 4413-49, 482-85; Ex. 24, Hartman 05/07/98 Dep. at 310-11; Ex. 52, Spartin Polygraph at 14, 16, 18, 19, 22, 28, 33; Ex. 169, SMFC3 10018-76, Compilation of statements shown to Spartin (a/k/a "Exhibit 707"). Inspectors Hartman and Kormann agreed with Valder that this information should be provided to Spartin, and they were aware at that time that Spartin was being provided with these grand jury materials. Ex. 41, Kormann Dep. at 448-50, 539-40, 556 (indicating that Hartman, Kormann and Valder were an integral part of the process that led to giving Spartin the grand Jury statements of other witnesses); Ex. 105, Valder Dep. at 376-77 ("***we*** gave [Spartin] parts of summary statements"), 421 ("***The Inspectors and I*** were religious in not letting, [Spartin] know what other uses those documents had been put to . . ."); Ex. 24, Hartman 05/07/98 Dep. at 313-14, 316-17 and 05/08/98 Dep. at 503; Ex. 52, Spartin Polygraph at 14, 16, 18, 19, 22, 28, 33. In fact, Inspector Kormann specifically testified that, with respect to the grand jury statements of Gnau and Marcus, "***my***

recollection is that is something that we would have given [Spartin] and, based on what he says here in this polygraph transcript, we probably did." Ex. 41, Kormann Dep. at 539-40 (emphasis added). In addition, Spartin testified during the criminal trial that both Valder and the Inspectors were involved in providing him with the grand jury statements of other witnesses. Ex. 26, Trial Tr. at 2730.

195. Spartin understood at the time he reviewed the grand jury statements that he was in fact looking at the grand jury statements of others who had already appeared before the grand jury. Ex. 52, Spartin Polygraph at 14, 16, 18, 19, 22, 28, 33.

196. After being provided with the grand jury statements of other witnesses, Spartin's view of the facts became tainted and "colored." In fact, Spartin later admitted that "[w]hat colors a lot of this is that I read the testimony of those guys and I was appalled when I read it, because it bothers me now. Some of the things that were going on that I didn't know about." Ex. 52, Spartin Polygraph at 14. Spartin also admitted that "[y]ou see my confusion here is what I'm reading now and what I understand was different at the time I was telling the Inspectors." *Id.* at 19. This confusion led Spartin to implicate Moore and REI even though Spartin had no personal knowledge that Moore was aware of the Voss/Gnau payment scheme:

> ROBBINS: Do you have any knowledge about whether anyone in REI knew Peter Voss was involved in this scheme to get them the sole source contract? or was being paid?
>
> SPARTIN: Let me answer you this way. Being paid, no sir, I don't. I have no knowledge of

> that at all. Peter Voss being part of the deal, no knowledge. ***But you know, I read that goddamn testimony and I'm not a lawyer but Jesus, there's enough there to seem to me to hang REI from the yardarm.***

Id. at 28 (emphasis added).

197. On December 5, 1986, William Spartin was given a polygraph examination that was administered by Inspector Robbins. Ex. 52, Spartin Polygraph; Ex. 26, Trial Tr. at 2597-99. The purpose of the polygraph was principally two-fold: to determine (1) whether Spartin had any personal knowledge of whether REI had been told about or was aware of the payments being made to Voss, and (2) whether Spartin had planned with anyone to withhold or conceal any information from the investigators. Ex. 100, Robbins Dep. at 27-28, 58; Ex. 41, Kormann Dep. at 478.

198. Spartin asked the postal Inspectors to administer the polygraph examination so that he could convince them that he was telling the truth with respect to, among other things, his lack of knowledge concerning Moore's and REI's knowledge of the Voss/Gnau payment scheme. Ex. 26, Trial Tr. at 2722-23.

199. Inspector Robbins did not identify himself as a postal inspector until near the end of the polygraph examination, and Spartin was surprised to learn that Robbins was an inspector. Ex. 26, Trial Tr. at 2723-24; Ex. 52, Spartin Polygraph at 37.

200. During his polygraph examination, Spartin stated approximately 19 times that, to his knowledge, Moore and REI were never told about and were not aware of the Voss/Gnau payoff scheme. Ex 52,

Spartin Polygraph at 16, 19, 20, 28, 315, 40, 43, 45, 48, 49, 50.

201. Spartin's polygraph examination showed that Spartin was being truthful when he said 19 times that he had no knowledge of anyone at REI being told about or being aware of the payoffs to Voss. He was also being truthful when he said that he had not agreed with anyone to conceal any facts or information from the investigators. Ex. 100, Robbins Dep. at 71, 72-73, 83-84; Ex. 41, Kormann Dep. at 480-81.

202. As a result of Spartin's polygraph examination, Inspector Robbins concluded that Spartin had no personal knowledge of Moore or anyone else at REI being aware of the Voss/Gnau payoff scheme. Ex. 100, Robbins Dep. at 87; Ex. 41, Kormann Dep. at 49394.

203. During Spartin's polygraph examination, Inspector Robbins recognized that Spartin was exasperated because he (Spartin) kept telling the Inspectors that he did not know anything about REI having knowledge of the payoffs and noone would belief him and just kept "beating him up" on that issue. In fact, Inspector Robbins recalls Spartin in essence telling him, "I've told them what I know and they just won't accept what I'm telling them, and they want me to say something different." Robbins Dep. at 83. In this regard, Spartin stated during his polygraph: "But I, what confuses me is that everyone is beating me up on this issue of [REI's and Moore's knowledge] and I don't know what people want. I tell them but if they would talk to my attorney and tell my attorney, my attorney could tell me, then I could tell you the answers they want. I don't know." Ex. 52, Spartin Polygraph at 20; Ex. 41, Kormann Dep. at 549-50.

204. During his polygraph examination, Spartin expressed concern that the postal Inspectors had threatened to implicate and indict Spartin's son in the conspiracy scheme. Ex. 26, Trial Tr. at 2599. In fact, Spartin complained to Robbins that "I thought they [Valder and the Postal Inspectors] played a dirty game with me because they tried to get my son involved . . . That truly troubles me because what they tried to tell me was look, Spartin, you are in deep trouble. You have lied to us. We are going to charge him with obstruction of justice and we talked about that." Ex. 52, Spartin Polygraph at 51; Ex. 26, Trial Tr. at 2602-04; Ex. 41, Kormann Dep. at 557-60.

205. During his polygraph examination, Spartin acknowledged that he had every incentive—and no disincentive—to implicate Moore in the payment scheme if he could. Still, Spartin acknowledged that he could not do so: "I don't give a hoot and hell about Bill Moore . . . . Boy would I tell you [if I knew something on REI], I got nothing to lose. It's stupid not to tell . . . but I can't make up a story." Spartin also stated that "I wish I could give them REI . . . and I'll be damned if I can do it, and I'm not gonna lie." Ex. 52, Spartin Polygraph at 22, 49, 36.

206. During Spartin's polygraph examination, Inspector Robbins became aware that Spartin had been provided with the grand jury witness statements and testimony of other witnesses who had appeared before the grand jury. Ex. 100, Robbins Dep. at 76-77.

207. Inspector Robbins understood at the time of Spartin's polygraph examination that it was a violation of grand jury secrecy rules to share the grand jury testimony and exhibits of one witness with another

witness who was going to appear before the grand jury. *Id.* at 47-48.

208. After learning that Spartin had been provided with the grand jury testimony and statements of other grand jury witnesses, Inspector Robbins did not do any follow-up or question any of the other Inspectors as to why Spartin had been provided with such information. *Id.* at 77-78.

209. During the grand jury proceedings, Valder, Hartman and Kormann met with William Hittinger prior to Hittinger's testimony before the grand jury. Ex. 41, Kormann Dep. at 329-36. During that meeting, Valder commented that "whether the persons (involved) in this case were guilty or not did not concern him" and that Valder's motivation in this case was to get a high profile conviction "to get a track record or some notoriety which would help him obtain a good position in private practice." Ex. 170, Affidavit of William C. Hittinger, dated 3/28/92, ¶ 6; Ex. 171, Hittinger Dep. at 27-28; Ex. 105, Valder Dep. at 177-83. Neither Hartman nor Kormann repudiated or disavowed Valder's declaration. Ex. 171, Hittinger Dep. at 27-28.

210. During August 1987, Spartin met with Inspectors Hartman and Kormann to prepare for his grand jury testimony. During this meeting, Hartman and Kormann showed Spartin various documents and asked Spartin whether he would give an opinion that Moore and Reedy knew about the payment scheme between Voss and Gnau. Ex. 109, DOJ28 000183A-229, 9/01/87 Spartin Grand Jury Testimony at DOJ28 000192. Based on Spartin's polygraph examination, as well as Spartin's prior interviews during the investigation, Hartman and Kormann knew that such an opin-

ion was directly contrary to Spartin's own personal knowledge. Hartman and Kormann also knew—or under the circumstances should have known—that Spartin's "opinion" was based on the grand jury witness statements that Spartin had been shown.

211. Based on the results of Spartin's polygraph examination, Inspector Robbins concluded that he would not have asked Spartin to give an opinion before the grand jury that was contrary to Spartin's own personal knowledge. Ex. 100, Robbins Dep. at 86-88.

212. During the grand jury proceedings, Valder made it clear to the grand jury that Spartin was a central witness in the government's case against Moore and REI. Ex. 172, DOJ1 000642-51, 7/15/86 Grand Jury Tr. at DOJ1 000644 (Valder's comments to the grand jurors); Ex. 173, DOJ1 00680-87, 11/20/86 Grand Jury Tr. at DOJ 000681 (Valder's comments); Ex. 107, DOJ1 000540-64, 3/19/87 Grand Jury Tr. at DOJ1 00060-61 (Valder's comments); Ex. 174, DOJ1 000565-71, 6/04/87 Grand Jury Tr. at DOJ1 000568 (Valder's comments); Ex. 175, DOJ1 000578-92, 9/01/87 Grand Jury Tr. at DOJ1 000579-82, 000585-86 (Valder's comments).

213. On September 1, 1987, Spartin testified before the grand jury. Ex. 109, DOJ28 000183A-229, 9/01/87 Spartin Grand Jury Tr. As part of Spartin's testimony, his witness statement that had been prepared by the Inspectors was read to the grand jury and was offered as an exhibit for the grand jury's consideration. *Id.* This statement intentionally omitted any information to the effect that Spartin had no knowledge of whether Moore or anyone else at REI was aware of the payment scheme between Voss and

Gnau. Ex. 106, DOJ28 000155-82, Spartin Statement; Ex. 41, Kornmann Dep. at 496-97, 504-05, 521-25.

214. Spartin's grand jury witness statement was principally drafted by Inspectors Hartman and Kormann. Ex. 41, Kormann Dep. at 521.

215. Spartin was not asked during his grand jury testimony whether he had any personal knowledge of Moore or anyone else at REI being aware of the kickbacks to Peter Voss. Ex. 109, DOJ28 000183A-229, 9/01/87 Spartin Grand Jury Tr. Instead, Valder elicited an "opinion" from Spartin that Moore and Reedy knew about the Voss/Gnau payment scheme. *Id.* at 10. This "opinion" was the same opinion that the Inspectors had worked with Spartin to develop in August 1987 in preparation for Spartin's testimony. *Id.* In addition, this "opinion" was directly contrary to Spartin's own personal knowledge that, as far as he was aware, Moore and Reedy did not know about the payment scheme.

216. According to Inspector Kormann, the failure to present the grand jury with Spartin's lack of personal knowledge concerning Moore's and REI's alleged awareness of the payments to Voss would have been an incomplete presentation of the facts and would have been unfair and improper. Ex. 41, Kormann Dep. at 508-10, 527-29, 534-36. Kormann also admitted that leaving out relevant evidentiary information from the grand jury's consideration would not be fair and proper. *Id.* at 516-19.

217. Spartin was the only coconspirator/grand jury witness who testified that Moore allegedly knew about the Voss/Gnau payment scheme.

218. During the grand jury proceedings, Valder told the grand jury on November 20, 1986 and

again on December 4, 1986 that Spartin was going to be given a polygraph examination "and sometimes those break down a person's intentions to fabricate information. It's more of a psychological thing. The results will show whatever they show and whatever will happen will happen." Ex. 173, DOJ1 000680-87, 11/20/86 Grand Jury Tr. at DOJ1 000681; Ex. 176, DOJ1 000688-92, 12/04/86 Grand Jury Tr. at DOJ1 000689. Despite this revelation, however, neither Valder nor the Inspectors ever presented the grand jury with the results of the polygraph examination or the fact that Spartin had admitted 19 times during the polygraph that he had no knowledge of Moore or anyone at REI being aware of the Voss/Gnau payment scheme.

219. On October 10, 1986 John Gnau testified before the grand jury. Ex. 157, DOJ29 000496-511, 10/16/86 Gnau Grand Jury Tr. As part of Gnau's testimony, his witness statement that had been prepared by Inspectors Hartman and Kormann was read to the grand jury and was offered as an exhibit for the grand jury's consideration. *Id.*; Ex. 41, Kormann Dep. at 563-64. This statement did not contain any information to the effect that Gnau never told Moore or anyone else at REI about the payment scheme between Voss and Gnau. Ex. 39, DOJ23 001681-702, Gnau Statement; Ex. 41, Kormann Dep. at 590-607. Nor did the statement contain any context for the quotes that were allegedly attributable to Reedy. Ex. 26, Trial Tr. at 404-05, 557, 588, 590-91, 601, 604-05, 606-611.

220. During their investigation, the Inspectors had no evidence that Moore was aware of the discussions concerning "our friend" and "it's better that you not know what my arrangement is with Voss" that allegedly occurred between Gnau and Reedy as set

forth in Gnau's grand jury statement. The Inspectors similarly had no evidence that Gnau ever had any conversation with Moore in which Gnau said that "it's better that you not know what my arrangement is with Voss." Ex. 41, Kormann Dep. at 580.

221. On July 16, 1987 Frank Bray testified before the grand jury. Ex. 78, SMFC3 01414-1526, 7/16/87 Bray Grand Jury Tr. As part of Bray's testimony, his witness statement that had been prepared by Inspectors Hartman and Kormann was read to the grand jury and was offered as an exhibit for the grand jury's consideration. *Id.*; Ex. 41, Kormann Dep. at 612-13; Ex. 177, DOJ27 000211-32, Grand Jury Summary of Bray testimony; Ex. 178, Inspectors' notes of 6/09/87 (SMFC3 01754-83) and 7/14/87 (SMFC3 01874-96) Bray interviews.

222. In preparation for Bray's grand jury testimony, the Postal Inspectors met with Bray and his attorneys to review and discuss Bray's grand jury statement. During these meetings, the Inspectors refused to allow Bray to make certain changes to his grand jury witriess statement, including adding a statement that, to Bray's knowledge, Moore was not involved in or aware of the kick-back scheme. Instead, the Inspectors insisted, after a marathon session that lasted until 1 or 2 a.m. the day before Bray's testimony, that their version of certain events be contained in the grand jury statement. Ex. 26, Trial Tr. at 1809-11, 1832-33, 1939, 1952 (Bray testimony); Ex. 41, Kormann Dep. at 620-24, 628-30, 646-64; Ex. 24 Hartman 5/07/98 Dep. at 272, 274-84 and 4/20/00 Dep. at 260-66. In Frank Bray's words, the Inspectors "controlled" the document, which Bray viewed as a "slanted" and "one-

sided" picture of what he had actually told the Inspectors. Ex. 26, Trial Tr. at 1810, 1832-33.

223. One of the fundamental points that Bray disagreed with the Inspectors was that Bray wanted a statement in his summary to the effect that Bray did not know that Voss was being paid by Gnau and that to his knowledge, neither did Moore or Reedy. The Inspectors refused to include any such statement in Bray's summary. *Id.* at 1939; Ex. 41, Kormann Dep. at 652-53; 661-62, 664.

224. As part of his grand jury statement, Bray wanted to include a final paragraph that related to Moore and Reedy. The Inspectors and Valder, however, refused to include the paragraph in Bray's statement, and Valder wrote and circled the words "don't reveal" under this paragraph in the draft statement. Ex. 179, DOJ6 000222-243, 7/16/87 Valder's Notes on Bray's Grand Jury Testimony at DOJ6 000243; Ex. 41, Kormann Dep. at 648-49, 651-52.

225. AUSA Valder and Inspectors Hartman and Kormann also attempted to coerce Bray into adopting the statement as they had drafted it by telling Bray that he would have to testify before the grand jury for "five to seven" days or "however long it takes." Ex. 26, Trial Tr. at 1824; Ex. 41, Kormann Dep. at 634-35.

226. In the course of negotiations with Bray and his attorneys over the content of Bray's grand jury statement, Valder and the Inspectors were presented with a list of questions that Bray wanted to have asked in the presence of the grand jury. Ex. 180, WM 031784-5, List of questions; Ex. 41, Kormann Dep. at 639-42. These questions were provided in an effort to elicit the

same type of information that Bray had asked to have included in his written statement, but which the Inspectors had refused to include. Ex. 26, Trial Tr. at 1943-44; Ex. 41, Kormann Dep. at 638-39, 642-43, 669-70; Ex. 105, Valder Dep. at 620. One of the questions specifically addressed the issue of Moore's knowledge of the kickbacks to Voss. Ex. 41, Kormann Dep. at 665.

227. When Bray appeared before the grand jury, Valder refused to ask Bray whether Moore was aware of the conspiracy. Ex. 26, Trial Tr. at 1943-44; Ex. 78, SFMC3 01414-526, 7/16/87 Bray Grand Jury Tr.; Ex. 41, Valder Dep. at 393-95, 449-51, 478-90, 617-21.

228. Inspector Harrington—who is now deceased—testified at the criminal trial that the Inspectors' tactic of refusing to let Bray change his statement was wrong and contrary to Inspection Service policy. Ex. 26, Trial Tr. at 3346, 3348-50, 3363, 3446, 3467.

229. As part of their investigation of REI and Moore, the Postal Inspectors prepared a document entitled "Details of the Offense." Ex. 35, SMFC4 00004-147, "Details of the Offense." This document was principally prepared by Inspectors Hartman and Kormann. Ex. 41, Kormann Dep. at 62-67, 743-46; Ex. 24, Hartman 4/20/00 Dep. at 104, 128, 130-31; Ex. 181, Defendants' Answers and Objections to Plaintiff's Fourth Set of Interrogatories, Answer No. 4.

230. The "Details of Offense" set forth the bases on which the postal Inspectors believed that Moore and REI should be indicted and prosecuted. Ex. 35, SMFC4 00004-147, "Details of Offense" at SMFC4 00009; Ex. 24, Hartman 4/20/00 Dep. at 114-15; Ex. 41, Kormann Dep. 164-65.

231. The "Details of Offense" concludes, in part, that "Moore's . . . intent to defraud the USPS is evident [because] . . . [o]n or about July 25, 1985, at Moore's and Reedy's suggestion and with their substantial input relative to its drafting, Congressman Frost proposed an amendment to a USPS appropriate (sic) bill that in effect would freeze USPS revenue until MLOCRs were purchased from REI." Ex. 35, SMFC4 00004-147, "Details of Offense" at SMFC4 00019. This alleged basis for prosecution was also referenced by Valder in his push to get the case indicted. Ex. 182, DOJOPR 000374-406, Valder's annotated version of the Knight/Leeper June 1, 1988 Memorandum at DOJOPR 000379-80 and DOJOPR 000406; Ex. 183, DOJOPR 000362-373, 6/01/88 Knight/Leeper Memo to USA Stephens; Ex. 184, DOB 01284-1318, 2/11/88 Valder Memo re: REI/Moore/Reedy Submission; Ex. 185, DOJ29 001290301, 04/15/88 Valder Memo.

232. The "Details of Offense" concludes, in part, that "Moore's . . . intent to defraud the USPS is evident [because] . . . [d]uring the period August 1985 to April 1986, REI continued to undermine the competitive testing program via the media and Congress." Ex. 35, SMFC4 00004-147, "Details of Offense" at SMFC4 00019; Ex. 24, Hartman 04/20/00 Dep. at 1131-33, 137-38. This alleged basis for prosecution was also referenced by Valder in his push to get the case indicted. Ex. 182, DOJOPR 000375-406, Valder's annotated version of the Knight/Leeper June 1, 1988 Memorandum at DOJOPR 000379-80 and 000406; Ex. 184, DOJ3 01284-1319, 2/11/88 Valder Memo re: REI/Moore/Reedy Submission; Ex. 185, DOJ29 001290301, 04/15/88 Valder Memo.

233. As evidence of Moore's supposed participation in the Voss/Gnau conspiracy, the Postal Inspectors noted in the "Details of Offense" that "REI lobbied several Congressmen to pressure USPS into purchasing equipment from REI. REI drafted letters which Congressmen sent to USPS. Reedy and Moore worked with Congressman Frost to draft an amendment to a USPS appropriations bill which, if passed, would have prevented release of funds to USPS until REI obtained a USPS contract." Ex. 35, SMFC4 00004-147, "Details of Offense" at SMFC4 00007.

234. As part of the "Details of Offense," the Inspectors identified Congressmen Jack Brooks and Martin Frost as "Key Players" in the Inspectors' case against Moore. *Id.* at SMFC4 00022-23.

235. The "Details of Offense" is peppered with references and analysis of Moore's contacts with Congressmen and the media in connection with the procurement of a postal service contract for REI. *Id.* at SMFC4 00007, 19, 22-23, 27, 28, 30, 34, 72, 81, 82, 86, 90.

236. During the investigation, Inspectors Hartman and Kormann prepared a document entitled "Arguments for Indicting the Corporation" that may have been shared with Inspector McIntosh as well. Ex. 41, Kormann Dep. at 163-64, 166., 728-29, 733; Ex. 24, Hartman 04/20/00 Dep. at 60-61, 107-08; Ex. 181, Defendants' Answers and Objections to Plaintiffs Fourth Set of Interrogatories. This document posits as the first reason for indicting REI the fact that the company and its Political Action Committee, wholly independent of the GAI kickback conspiracy, "funded a media and political campaign to discredit USPS management and cause financial harm to USPS, for example . . . (b) Frost amendment to freeze USPS

appropriations bill." Ex. 36, SMFC3 09861-64, "Arguments for Indicting The Corporation" at SMFC3 09861; Ex. 24, Hartman 04/20/00 Dep. at 70-78; Ex. 41, Kormann Dep. at 731. Former Chief Postal Inspector Clauson admitted that this is the type of First Amendment conduct that should not be used as a basis for seeking anyone's indictment. Ex. 20, Clauson Dep. at 176-77.

237. In addition to targeting media and political campaigning activities as a basis for indictment, the Arguments for Indicting the Corporation also posits other inappropriate reasons for seeking the company's indictment, including punishing REI for a 1977 grand jury investigation that did not result in indictment or prosecution, giving the government "greater flexibility and likelihood in pursuing civil remedies and penalties against REI," and "furnish[ing] the government a lever for plea negotiations." Ex. 36, SMFC3 09861-64, "Arguments for Indicting the Corporation" at SMFC3 09862-63. Former Chief Inspector Clauson testified that these would be an improper basis on which to seek someone's indictment. Ex. 20, Clausen Dep. at 180.

238. The Inspectors were not involved in any other case where they suggested that an indictment should be sought in order to give the government "greater flexibility and likelihood in pursuing civil remedies and penalties against" a party and/or "furnish the government a lever for plea negotiations." Ex. 41, Kormann Dep. at 741-43.

239. The Inspectors noted in the Arguments for Indicting the Corporation that they had no evidence that Moore or Reedy were individually aware of the Voss/Gnau payment scheme. Ex. 36, SMFC3 09861-64,

"Arguments for Indicting the Corporation" at SMFC3 09863.

240. During their investigation, the Inspectors focused on digging up "dirt" on REI's supporters on Capitol Hill. For example, when Chief Postal Inspector Charles Clauson was advised that "(Congressman) Zschau is running for Senate—so it looks like they are trying to throw a little dirt on him via REI," Clauson responded that "I hope we can get this data on all 'supporters' on the Hill both for the investigation and for Bob's [Zip + 4 Investigation] report." Ex. 101, SMFC4 07980-82, Edwards notes re: "digging up dirt" on REI supporters; Ex. 21, Edwards Dep. at 200-05; Ex. 20, Clauson Dep. at 149-50, Ex. 41, Kormann Dep. at 197; Ex. 22, McIntosh Dep. at 167-69.

241. As early as December 1985, the Inspectors had prepared an "Investigative Strategies" memo that labeled Moore and REI as "coconspirators in a scheme to defraud the U.S. Postal Service," even though there was no evidence that any such conspiracy existed at that time. Ex. 19, SMFC4 00202-239, Investigation Task Force's "Investigative Strategies" memo at SMFC4 00215-16; Ex. 21, Edwards Dep. at 423-26. Inspector Edwards acknowledged during his deposition that "I feel uncomfortable reading it today that it says coconspirators because there was no known conspiracy at that time." Ex. 21, Edwards Dep. at 457.

242. During their investigation, the Inspectors became aware that USPS management was frustrated over REI's congressional and media campaign concerning the MLOCR issue. Ex. 22, McIntosh Dep. at 239-40. According to Inspector McIntosh, USPS personnel "had the normal human reaction of being frustrated, especially since they didn't have any way to insulate

themselves from the continued receipt of criticism. They just had to basically sit there and take it." *Id.* at 240. See also Ex. 21, Edwards Dep. at 188 (REI's campaign to kill Zip+4 "ruffled some feathers" among USPS personnel).

243. As part of the investigative strategies that were developed by the Inspectors in December 1985, Inspector Hartman's notes reflect that the Inspectors were going to gather records relating to "REI contributions to candidates for public office." Ex. 19, SMFC4 00202-39, investigation Task Force's "Investigative Strategies" memo at SMFC4 00233, 235. Hartman also planned to gather all REI "internal and external memos and correspondence related to OCR issue to include but not be limited to incoming and outgoing messages and letters to . . . Elected/Appointed Public Officials (Congressmen, Senators)." *Id.* at SMFC4 00234.

244. The Inspectors were aware during their investigation that Moore had been lobbying Congress and media in a effort to obtain a postal service contract on behalf of REI. Ex. 41, Kormann Dep. at 174-75, 249-50, 383; Ex. 24, Hartman 05/07/98 Dep. at 318-19; Ex. 21, Edwards Dep. at 173-74, 178-179, 428; Ex. 22, McIntosh Dep. at 158, 442; Ex. 111, DOJ 0000032-372, 1/87 Zip + 4 Automation Investigation Report at 5; Ex. 65, Congressional letters; Ex. 186, 7/24/85 (SMFC3 08932) and 7/29/85 (SMFC3 08933) letters from Moore to Congress (transcribed by Inspectors); Ex. 19, SMFC4 00202-39, Investigation Task Force's "Investigative Strategies" memo at SMFC4 00239 ("Intense political lobbying is underway by REI's president, William Moore."). In fact, the Inspectors focused on Moore's and REI's PAC contributions and lobbying

efforts during their investigation. Ex. 153, SMFC3 09279-82, 7/24/86 Subpoena for REI PAC contributions and SMFC3 9157-59, 2/09/87 Subpoena re: REI's political activities; Ex. 36, SMFC3 09861-64, "Arguments for Indicting the Corporation" at SMFC3 09861; Ex. 187, POS-004-00598-609, Inspectors 8/05/86 draft outline of investigation ("Document REI's political action committee contributions to the above politicians who had taken a public stance on Zip+4"); Ex. 21, Edwards Dep. at 254-55, 405, 446-47; Ex. 41, Kormann Dep. at 176, 181, 183, 186; Ex. 24, Hartman 04/20/00 Dep. at 34-35; Ex. 19, SMFC4 00202-39 Investigation Task Force's "Investigative Stategies" memo at SMFC4 00216, 233-34); Ex. 133, SMFC3 02754-71, 3/03/87 Hartman's memo to file of "REI Interviews" at 3, 5-7, 12, 15. One subpoena requests, inter alia, (i) "articles placed with trade publications and reporters"; (ii) "records reflecting the arrangement of interviews with journalists and reporters"; and (iii) "records reflecting meetings with United States Congressmen." Ex. 153, SMFC3 9157-59, 2/09/87 Subpoena re: REI political activities.

245. During the investigation, Hartman reviewed Moore's diaries and prepared a summary that focused, among other things, on Moore's and REI's congressional communications. Ex. 188; SMB4 02742-806, Excerpts from Moore's diary (transcribed by Inspectors); Ex. 24, Hartman 04/20/00 Dep. at 252-53.

246. During the investigation, the Inspectors interviewed a staff member (Bonnie Catone) of Congressman Martin Frost and questioned her about Congressman Frost's assistance to REI. Ex. 59 USA-015-0258-62, Kormann notes of 2/09/87 Bonnie Catone Interview; Ex. 41, Kormann Dep. at 400, 404-05.

247. During the investigation, Hartman prepared a summary of the "more pertinent comments" from various interviews. Ex. 133, SMFC3 02754-71, 3/03/87 Hartman's memo to file of "REI Interviews". One of the excerpts that Hartman focused on was the fact that "Moore held fund raisers for Congressmen Brooks, Frost and Zschau at his private residence." *Id.* at 12. When questioned about this entry during his deposition, Hartman could not explain why this was one of the "more pertinent comments" from the interviews. Ex. 24, Hartman 04/20/00 Dep. at 282-83.

248. During the Investigation, Hartman and Kormann interviewed various members of the REI board of directors. As part of their standard questioning of the REI board members, Hartman and Kormann asked about REI's congressional lobbying campaign. Ex. 41, Kormann Dep. at 243-52; Ex. 189, 12/03/87 (SMFC3 02447-54) and 2/23/88 (SMFC3 0245562), Handwritten Interview Outline at SMFC3 02460 (Item J). They also inquired whether Moore had requested REI or any board members to make any political contributions. *Id.* at SMFC3 02462; Ex. 41, Kormann Dep. at 287-90.

249. During the investigation, Hartman and Kormann questioned Frank Bray about various congressional communications concerning the MLOCR issue. Ex. 41, Kormann Dep. at 676-77; Ex. 178, SMFC3 01754-83, Hartman notes of 06/09/87 Bray Interview at SMFC3 01774-75.

250. The Inspectors understood at the time of their investigation of Moore and REI that citizens and corporations have a constitutional right to make political contributions to candidates of their choice. Ex. 21, Edwards Dep. at 170; Ex. 41, Korrnarm Dep. at 177.

251. The Inspectors had never worked on any other investigation where someone's political contributions and correspondence with members of Congress were examined. Ex. 21, Edwards Dep. at 170, 405, 458.

252. During their investigation, the Inspectors focused on establishing when Congressional pressure came to bear on postal management during the procurement process. Ex. 86, Jellison Dep. at 74-76, 188-90; Ex. 190, DOJ23 001877-83, Inspectors' summary of 3/03/87 and 9/15/87 Neal Gregory interviews (focus on Moore's lobbying).

253. During their investigation, the Inspectors requested and received from ECA media data and resumes of various Congressmen who were supporting REI and Moore, including Representative John Kasik. Ex. 191, SM135 01020, 1/23/86 Memorandum from Ewald Lang, ECA to Hartman; Ex. 24, Hartman 7/07/00 Dep. at 10-12.

254. During the course of the investigation, Inspector Edwards felt that Hartman's and Kormann's questioning and treatment of various witnesses was too aggressive on occasion. In fact, Edwards recalled a "pretty heated" discussion with Hartman and Kormann where they got "pretty hot with each other" over this topic. Ex. 21, Edwards Dep. at 271-72, 365-68. While he could not recall the specifics, Edwards testified that "I just felt uncomfortable, and I pushed back pretty hard, and they pushed back—no physical—but, you know, some pretty hard words." *Id.* at 272.

255. On June 9, 1986, at 6:20 p.m., I spector McIntosh personally delivered to Paul Ca .'s residence various documents that had been gat. ed as part of the conspiracy investigation. Accord. to

McIntosh, these documents were delivered to Carlin because he requested them, and they were hand delivered because McIntosh believes that Carlin needed them as quickly as possible. Ex. 21, McIntosh Dep. at 95-105, 108-09; Ex. 102, DOJ23 00068788, McIntosh handwritten notes dated 6/09/86; Ex. 103, USA-015-0157, McIntosh note dated 6/09/86 re: "deliver to Carlin".

256. During the investigation of Moore and REI, the Inspection Service had an internal policy that prohibited the disclosure to third parties of information acquired during an investigation that was not a matter of public record. Ex. 22, McIntosh Dep. at 136. In this respect, it was a violation of Inspection Service Policy to disclose to a private citizen the results of information obtained during witness interviews that were conducted as part of an investigation. *Id.* at 137 .

257. On December 9, 1986, Inspector McIntosh Provided Carlin with sensitive and confidential interview summaries and FBI laboratory examination results related to Moore's criminal investigation. Ex. 22, McIntosh Dep. at 382-96; Ex. 103 SMFC4 01183, McIntosh's 12/09/86 handwritten notes of discussion with Carlin re: FBI lab results and interview. Specifically, McIntosh provided Carlin with the results of interviews with Albert V. Casey, John McKean (the chairman of the USPS Board of Governors), and Jackie Strange related to a BOG "freeze" order concerning the procurement of OCRs, as well as confidential FBI lab results relating to the freeze order. *Id.* While the average citizen or postal worker would not have been entitled to this sensitive information, the Inspectors justified their disclosure of this investigative material to Carlin on the grounds that he was the former post-

master general whom they felt had been "screwed" and improperly removed from office. Ex. 22, McIntosh Dep. at 391-93.

258. Inspector McIntosh was aware at the time he gave the results of the witness interviews and FBI lab results to Carlin on December 9, 1986 that Carlin was appealing the dismissal of a $15 million suit he had filed against the USPS Board of Governors as a result of his firing as Postmaster General. Ex. 22, McIntosh Dep. at 389-90; Ex. 103, SMFC4 01183, McIntosh's 12/09/86 handwritten notes of discussion with Carlin re: FBI lab results and interview; Ex. 110, SMB5 0138-39, 10/08/87 Letter from Carlin's attorney (Saltzstein) to. Clauson; Ex. 192, SMFC4 07998, Inspector's notes dated 7/25/86 ("use Carlin court brief").

259. Former Chief Postal Inspector Charles Clauson admitted that McIntosh's conduct in providing investigative information to Carlin after Carlin was fired as PMG was "'completely improper." Ex. 20 Clauson Dep. at 168.

260. Five days prior to McIntosh's disclosures to Carlin on December 9, 1986, BOG Chairman John McKean testified to the grand jury. As part of his grand jury testimony, McKean's statement—which was prepared by the Inspectors based on their prior interviews of McKean—was read and presented as an exhibit for the grand jury's consideration. Ex. 193, SMFC4 12785- 96, Grand Jury "Statement of John R. McKean" (hereafter "McKean Statement"). This summary statement included information concerning the March 5 BOG "freeze" order. *Id.* at 5.

261. On October 27, 1989, McIntosh submitted a statement to Judge Revercomb relating to

McIntosh's disclosures to Carlin on December 9, 1986. Ex. 194, WM 031662, 10/27/89 Mcintosh Statement to J. Revercomb. As part of his statement to the Court, McIntosh inaccurately represented that he had not been involved in interviewing any witnesses concerning the March 5 BOG "freeze" order, when in fact he had interviewed at least Albert Casey on this issue. Ex. 2, McIntosh Dep. at 393-96.

262. In September 1991, McIntosh was communicating with Carlin's counsel concerning the multi-million dollar lawsuit that Carlin had filed against Moore and others relating to Carlin's dismissal as PMG. As part of these communications, McIntosh received back from Carlin's counsel a copy of the "restricted" and confidential "Zip+4 Automation Report" that McIntosh and Edwards had prepared back in 1987. Ex. 22, McIntosh Dep. at 404-10; Ex. 195, 1-10-39, 5/01/91 Letter from Carlin's attomey (Saltzstein) to McIntosh (returning copy of Zip+4 investigation report).

263. On September 20, 1988, just sixteen days before the indictment against Moore and REI was handed down, Inspectors Hartman and Kormann met with Carlin to discuss the contents of the draft indictment. During this meeting, the Inspectors actually had a copy of the draft indictment with them. Ex. 41 Kormann Dep. at 723-25; Ex. 24, Hartman 5/08/98 Dep. at 450-52 and 04/20/00 Dep. at 10; Ex. 26, Trial Tr. at 2151-64; Ex. 196, Defendants' Concise Statement of Material Facts Not Genuinely in Dispute, ¶ 87.

264. The indictment that was actually returned against Moore, Reedy and REI contained language that had been suggested by Carlin during his meeting with Inspectors Hartman and Kormann on September 20, 1988. Ex. 26, Trial Tr. at 2151-64.

265. In May of 1989, Carlin brought a multi-million dollar lawsuit against Moore, Reedy and REI as a result of his dismissal as PMG. Ex. 26, Trial Tr. at 2162-2164; Ex. 197, Copy of Carlin's complaint.

266. In the course of their investigation, the Inspectors checked into the personal financial records of Moore and his wife going back at least 18 years, even though Moore did not join REI until 1982. Ex. 40, Moore Aff. ¶ 31; Ex. 24, Hartman 7/07/00 Dep. at 46-47.

267. In the course of their investigation, the Inspectors instituted a "mail cover" on Moore, whereby information that appeared on the external cover of first class mail addressed to Moore's residence was recorded by the USPS. Ex. 40, Moore Aff. ¶ 31; Ex. 198, Deposition Upon Written Questions of Henry J. Bauman, 3/25/92 at 19-21; Ex. 24, Hartman 5/07/98 Dep. at 324-25; Ex. 41, Kormann Dep. at 221-24.

268. Inspectors Hartman and Kormann actively advocated the indictment and prosecution of Moore. Ex. 41, Kormann Dep. at 153, 701-15; Ex. 24, Hartman 05/07/98 Dep. at 268-69, 294-299 and 04/20/00 Dep. at 62-63, 158-74. In this respect, unlike any other case they had ever worked on, the postal inspectors actively solicited the U.S. Attorney's Office in writing with letters from the Chief Postal Inspector to criminally prosecute Moore and REI. The Inspectors prepared two letters in May and July of 1988 and sent them under Clauson's signature to U.S. Attorney Jay Stephens. Ex. 20, Clauson Dep. at 185-194; Ex. 41, Kormann Dep. at 70102; Ex. 24, Hartman 05/07/98 Dep. at 294-99 and 04/20/00 Dep. at 157-58; Ex. 199, 05/13/88 (SMFC 4000556-57) and 07/27/88 (2-3-4) Letters.

269. Beginning in late 1987, Inspectors Hartman and Kormann met with Valder and other attorneys in the U.S. Attorney's Office on several occasions to review the merits of the case with the USAO review team and to advocate REI's and Moore's indictment. Ex. 200, SMFC4 00509-25, Inspectors' 6/11/86 notes re: DOJ briefings; Ex. 41, Kormann Dep. at. 690700. There is no evidence that, during these meetings, either Valder or the Inspectors ever disclosed to the review committee or to U.S. Attorney Jay Stephens, among other things: (1) the investigative teams' disclosure of grand jury materials to Spartin; (2) the misleading and incomplete nature of the grand jury witness statements that were scripted by the Inspectors; (3) the unfair manner in which key witnesses, such as Spartin and Bray, were coerced into giving misleading grand jury testimony; (3) the Inspectors' disclosure of confidential investigation materials to Carlin, including information that was presented to the grand jury regarding the BOG freeze order; (4) the results of Spartin's polygraph examination; or (5) Valders' and the Inspectors' failure to disclose exculpatory evidence to the grand jury as dictated by the U.S. Attorney's Manual.

270. On October 4, 1988, Valder appeared before the grand jury and asked that that an indictment be returned against Moore, Reedy and REI. As a part of his pitch to have the case indicted, Valder falsely represented to the grand jury that Marcus had provided Moore with an ECA brochure, and then he emphasized to the grand jury: "It's part of the theft circle, it's part of Voss doing the scheming for them. ***And it's right at a time when they're working on public opinion and Congress to bring pressure to bear on Carlin to not do the competitive procurements the he wanted to***

do and the Postal Service wanted to do. And three days after Moore gets that thing, he testifies before one of the committees on the Hill heaping criticism on the Postal Service for their handling of this." Ex. 201, DOJ1 000852-74, 10/04/88 Grand Jury Tr. at 000862 (Valder comments) (emphasis added).

271. The grand jury returned an indictment against Moore on October 6, 1988. Ex. 202, POS-004-0522-74, Copy of indictment.

272. Following his indictment on October 6, 1988, Moore lost his job at REI, and REI was debarred from postal procurement. Ex. 40, Moore Aff. ¶ 28; Ex. 203, POS 0130402-08, 10/05/88 USPS Procurement and Supply Memorandum re: REI debarment. In this regard, the Inspectors wanted to punish REI and Moore, and they developed a plan to "cleanse" the company of Moore even before Moore was tried for the charges alleged against him. Ex. 204, 004079-101, 11/25/88 Memorandum from Hartman to Clauson. As part of their justification for the "cleansing" plan, the Inspectors noted that "During November 1985 and through early 1986, Moore and REI publicly criticized Carlin's management of the MLOCR procurement." Ex. 204, 004079-101, 11/25/88 Memorandum from Hartman to Clauson at 004081.

273. On November 20, 1989, Moore was acquitted of all criminal charges against him. *Recognition Equip.*, 725 F. Supp. at 602.

Respectfully submitted,

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December 7, 2001

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Case Number 92cv2288 (NHJ) (AK)
[consolidated with 93cv0324 (NHJ)(AK)]

WILLIAM G. MOORE, JR., PLAINTIFF

v.

JOSEPH B. VALDER, ET AL., DEFENDANTS

Case Number 93cv0324 (NHJ) (AK)
[consolidated]

WILLIAM G. MOORE, JR., PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

VIDEOTAPED DEPOSITION OF
ROBERT J. EDWARDS

Washington, D.C.
Tuesday, Feb. 15, 2000

REPORTED BY:

FRANK A. SMONSKEY

* * * * *

[200]

* * * was upset with as much as he was the board. I certainly remember he was mad at the board.

MR. POHL: Okay. Rebundle that and put it aside here for a minute.

Let me ask that this document, the first page of which bears Bates number SMFC 407980, be marked as Edwards Deposition Exhibit 3 .

(Edwards Exhibit 3 identified.)

(Witness examined the document.)

BY MR. POHL:

Q. Do you have Exhibit 3 in front of you?

A. Yes.

Q. Do you recognize any of the handwriting on the front page of that document?

A. Yes, the chief and then the first part, this part here that I wrote (indicating).

Q. Okay. And attached to that copy of a routing slip are two newspaper articles?

A. Yes.

Q. The chief, would that be Chief Inspector Clauson?

A. That's correct.

[201]

Q. All right. Will you read the part that you wrote under the remarks section?

A. "Zschau is running for Senate—so it looks like they are trying to throw a little dirt on him via REI."

Q. Then there is a note underneath that says "Dave."

A. Right.

Q. And that's Clauson's handwriting?

A. I'm not very familiar with his, but, yes, I think this is his. Yes, it looks like that's his initial down at the bottom.

Q. Dave is Dave Smith?

A. That's correct.

Q. Okay. The name of the person is Zschau?

A. Zschau, yes.

Q. It's Z-s-c-h-a-u?

A. Yes, sir.

Q. All right. That refers to Congressman Ed Zschau, a Republican Congressman from Los Altos, which I think is California?

A. Yes.

[202]

Q. Where did you get these articles that you forwarded to the chief?

A. I don't have the slightest idea where I got them. In the Federal Times, I may have just gotten them here in D.C. But the San Diego Tribune. Once again, it may have been out of that Postal Service News Digest.

In fact, you might know if this next article says accident in it—no, that wouldn't make sense .

But that News Digest that I believe came out at this time that had every Postal Service-related article. People would fax in. See, that was their job, you know, public-relations people all over the nation. If the local newspaper had "Dog Bites Mailman," you know, they'd send in the article then somebody here to compile and send back out.

Q. These are two. One is July 31, '86. The other is August 11, '86. Right?

A. Uh-huh.

Q. And that is after the Voss plea?

A. Yes, that's correct.

[203]

Q. It's during the time when there was at least one grand jury subpoena out on REI, the one you had?

A. Yes, the one that I had.

Q. You and Harrington delivered it in April of '86?

A. Right.

Q. Okay. Your notes says: "Zschau is running for Senate. So it looks like they are trying to to throw a little dirt on him via REI," right?

A. Yes.

Q. Way did you think the chief inspector would be interested in that?

A. He just always liked to know what was going on with the case. I mean, this article in the Federal Times is a pretty good seized article for the Federal Times. He just wanted to know. I mean, if there was anything to do with the whole procurement, he would want to know about it.

Q. Who's the "they" you refer to or trying to throw dirt on a congressman?

A. I don't know. So it looks like, "They are [204] trying to throw a little dirt on him via the REI." I just don't know.

Q. Now, the response note, do you believe that was written by Clauson?

A. Yes, I believe it was.

Q. Dave Smith?

A. Yeah, I believe it was because of the initials.

Q. Did you ever see that before?

A. Well, I'll answer it two ways. I don't remember any of this until you showed me. I know obviously this is my note and I did this. I certainly don't remember seeing this note to Dave. I don't have any recollection of this note.

Q. Clauson's note says, if I'm reading it right: "Dave, I hope we can get this data on all 'supporters' on the Hill both for the investigation and for Bob's report."

Do you see that? Did I read that right?

A. Yes.

Q. Do you know what Clauson meant in the parlance that you would use in the inspection service [205] with regard to supporters on the Hill?

A. I hope we can get this data on all 'supporters' on the Hill.

I guess what he meant was people who had—just reading into this—that this data on all supporters of the buy REI, if you will, buy REI effort. That's what I'm guessing that means.

Q. All right. In context that's what it seems to me.

A. That's what it would seem to me, yes.

Q. And Bob's report, that's this big report that you were working on?

A. I guess so. But it seems like I wasn't working on it that early, because, like I said, I came back from New York in February of '87 to put that report together. It seems like that's early.

Maybe he had asked me to do it, but I sure didn't around to doing it for quite a long time afterwards. This isn't dated here.

I assume this is contemporary to these two articles. But I don't recall that we were working on it at that time.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

No. 92-2288 NHJ

WILLIAM G. MOORE, JR., ET AL., PLAINTIFFS

v.

JOSEPH B. VALDER, ET AL., DEFENDANTS

No. 93-0324 NHJ

WILLIAM G. MOORE, JR., ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT

The deposition of MICHAEL HARTMAN was taken on Thursday, May 7, 1998, commencing at 9:00 a.m., at the offices of Jones Day Reavis & Pogue, 1450 G Street, N.W., Washington, D.C., before Robert F. Sager, Notary Public.

* * * * *

[246]

A. The truth.

Q. Are you saying that—you certainly believe it would be improper, don't you, in drafting a witness statement, to leave out portions of what the witness has told you which is exculpatory and which if the

Grand Jury knew about it might well cause them not to indict someone?

A. I don't know if that is the case or not. The presentation of exculpatory evidence, Brady material, again is the interpretation of the United States Attorney; what to present to the Grand Jury is a decision of the United States Attorney, to my understanding.

Q. In this particular case, you worked with other agents to prepare summaries of witness testimony, right?

A. Yes.

Q. And you understood that the witnesses were going to go into the Grand Jury room and just read those summaries, right, and adopt that as their own testimony?

A. They were going to, to my understanding, [247] read those summaries and swear that they were truthful. Whatever else they did in the Grand jury was beyond my control.

Q. You recall being cross-examined by Mr. Bennett at the trial in this action?

A. Yes.

Q. I think you indicated to him that in the witness summaries for Voss, Gnau, Spartin and Marcus, which you either drafted or participated in preparing, none of those witness summaries said directly that the witness had told you and the other inspectors that none of them told Bill Moore

directly of the kickback scheme; do I recall the testimony correctly?

MR. MONTAGUE: Object to form.

THE WITNESS: I don't know if you recall the testimony correctly or not.

BY MR. POHL:

Q. Did any of the summaries say specifically that the witness whose summary it was never told Bill Moore about the conspiracy?

A. I don't know if they said that they never [248] told Bill Moore about the conspiracy. To my recollection they did not. But you are making a general statement about "told Bill Moore about the conspiracy." Bill Moore participated in the conspiracy, they didn't have to tell him about the conspiracy.

Q. Well, none of the statements indicate from those four witnesses that the witnesses never told Bill Moore of the kickback scheme? The statements don't say that, do they?

A. I have not seen the statements since 1989. They speak for themselves. They are part of the Grand Jury transcript.

Q. I am talking about what—Well, I know they are part of the Grand Jury transcript, but this was discussed in your cross-examination at trial, wasn't it? That you read yesterday?

A. To my recollection there was some discussion of this area, but I can't recall a specific question.

Q. Well, don't you remember telling Mr. Bennett at trial, and I can appreciate why you might not [249] want to admit this, that none of the statements contained the specific statements that those witnesses had told you that they never told Bill Moore about the kickback scheme?

A. Now you are asking a different question. Now you are asking if they told him about a kickback scheme. Before you asked if they told him about a conspiracy.

Q. Let's take it one at a time. The kickback scheme. You asked the witnesses when you interviewed them, and you asked them on more than one occasion, as to each witness, if they ever told Bill More about the kickback scheme. That is true, isn't it?

A. In substance that is true, that they did not tell—they said that they did not tell him that they were paying Peter Voss.

Q. And you left those out of every single witness summary you drafted, didn't you?

A. It isn't a matter of leaving something out.

Q. Well, it wasn't in the statements, was it?

A. If it is not in the statements, it is not in [250] the statements .

Q. And you believe as you sit here today it was not in the statements, isn't that right?

A. I suspect that there is something in the statements about Bill Moore's participation in this conspiracy.

Q. I am asking you about the kickbacks right now. You are trying to change the question on me and you made Mr. Bennett work a long time. I don't know why you don't want to answer the question. But I will take the time to fish it out of you.

A. You are asking me—

MR. MONTAGUE: Hang on, Mike, that is not a question, it is a speech.

BY MR. POHL:

Q. Isn't it a fact you never put in the witness summaries that the witnesses never told Bill Moore about the kickback scheme? Isn't that a fact, sir?

A. That the witnesses never told. To my knowledge it is not—in that manner it is not in those statements. But it is not a matter of leaving something out.

* * * * *

[253]

* * * front of the Grand Jury, Mr. Bennett read from the transcript it appears.

He said: "And do you remember being asked this question by Mr. Valder:

"QUESTION: To help focus the Grand Jury's thinking and knowledge of the facts, can you maybe take five minutes or two, I don't care how long you take, but sort of summarize for them the real important pieces of evidence in light of this large scenario that we have. Just summarize the very most important pieces of evidence which indicate reason to think that perhaps one or more of the REI officers knew of and participated in this payoff scheme. Do you remember that, sir?

"ANSWER: Yes, sir."

Was that your testimony at that time:?

MR. MONTAGUE: Why don't you let him read it?

(Document handed to witness by Counsel Pohl).

THE WITNESS: As far as I know, yes, this is my testimony at that time. It is the transcript.

[254]

BY MR. POHL:

Q. Was that testimony true when you gave it under oath?

A. Yes.

Q. Jump ahead to page 3804 of that transcript.

"When Mr. Valder started asking you to focus in on the knowledge of Reedy and Moore, he

said he wanted you to summarize the important pieces of evidence, is that right?"

Your answer is, "That is what he said, yes."

Was that your testimony on that day?

A. If you are reading from the transcript, yes, it is.

Q. You may look at that. It starts at the top there and it is the first answer.

A. Yes.

Q. And let me see that back again.

The next question on page 3805 is:

All right, you did not tell the Grand Jury, did you, that Gnau said that he didn't tell the defendants about the payments to Voss. You didn't tell the Grand Jury that, did you.

[255]

"ANSWER: That is correct."

That is your answer. Was that your testimony at that time?

A. As far as I know, yes.

Q. And was that testimony accurate when you gave it?

A. Yes.

Q. So now Mr. Valder asked you to summarize the, quote, "real important pieces of evidence in light of this large scenario that we have. Just summarize the very most important pieces of evidence which indicate reason to think that perhaps one or more of the REI officers knew of and participated in this payoff scheme." And in answering Mr. Valder's question you never told the Grand Jury that Gnau had specifically told you that he didn't tell Moore and Reedy about the payments to Voss. You never told them that, did you?

A. To the best of my recollection, and according to that transcript, no, I did not tell them that.

Q. And the reason you didn't tell them is [256] because at that point you had made up your own mind that you wanted to get an indictment of Moore and Reedy, isn't that true?

A. No.

Q. Explain to me why you didn't tell them?

A. John Gnau had told us what Robert Reedy asked him, What is your arrangement with Peter Voss. And he told Robert Reedy, It is better you not know what our arrangement with Peter Voss is.

John Gnau considered that in essence to be telling REI that he had a financial relationship with Peter Voss. And I probably testified to that in the Grand Jury.

Q. The Grand Jury transcript would be the real source of what you testified to, right?

A. Yes.

Q. And when Mr. Valder had asked you to give the Grand Jury the important pieces of evidence with respect to what Reedy and Moore knew, you never specifically told the Grand Jury, did you, that Marcus, Spartin, Gnau and Voss had all told you and your investigative team more than once that [257] they had not told Moore specifically about the kickback scheme?

MR. MONTAGUE: Object to form.

THE WITNESS: Again, it is difficult to follow that long question as to what I told the Grand Jury.

I don't have the Grand Jury transcript in front of me to refresh my recollection as to what I said to the Grand Jury.

BY MR. POHL:

Q. Mr. Hartman, you know that you went out of your way not to tell the Grand Jury that specific fact that all of those four conspirators had said repeatedly and plainly that they had never told Moore about the kickback scheme. Didn't you specifically plan not to let the Grand Jury know that?

MR. MONTAGUE: Object to form.

THE WITNESS: It is a very long question. It is very easy to—listen to me a second. It is very easy for me to understand the end of your question and, No, I did not plan, I never [258] intentionally

withheld any fact from the Grand Jury or anyone else.

I advised the United States Attorney's Office and all Assistant United States Attorneys involved in this matter that the co-conspirators told us that they did not directly tell Bill Moore and others that there was a, quotes, kickback arrangement, but that the evidence indicates that Moore, Reedy, and REI knew that there was an illegal relationship between Peter Voss and these co-conspirators.

Q. You did tell the Grand Jury, if I understand what you are telling me, that you thought the evidence, the circumstantial evidence was such that Moore would have known or must have known; is that what you told them in substance?

A. I don't recall telling the Grand jury what I thought or what I believed. I only gave them, to my knowledge, the fact situations.

Q. And in giving them, as you said, the fact situations, you left out, didn't you, the fact that each of the conspirators had said specifically and [259] directly to you that they didn't tell Moore about the kickback scheme? You left that part out, didn't you?

A. Again, you know, there is a difference in what the co-conspirators believed Moore knew, or Reedy knew and REI knew and it is difficult for me—

Q. You are not answering my question. I move to strike as not responsive. If you want it read back

you can answer. Or if you agree to review the Grand Jury transcript and show me where you told them directly what those four conspirators had told you—

A. Sir, I believe I was responsive, because John Gnau did—

Mr. MONTAGUE: Okay.

MR. POHL: Would you read the last question

(The record was read as requested.)

THE WITNESS: I didn't intentionally leave anything out, is my answer to that question

BY MR. POHL:

* * * * *

[272]

Q. We talked briefly about the incident with Mr. Bray's lawyer, with Judge Huvelle. That was the night before Mr. Bray testified to the Grand Jury, right?

A. Yes.

Q. And let me back up a second.

Why weren't witnesses allowed to just go in and be asked questions and answer them however they should be answered under oath?

Why were these summaries that others other than the witnesses drafted used?

A. Well, you said why weren't they allowed. As far as I know, they were allowed to go in and testify without the summaries.

Q. Did you ever tell people that you wanted them to testify from the summaries? Or did Mr. Valder or anyone in your presence say that to the witnesses?

A. I didn't tell them that I wanted them to, and I don't recall anyone telling them that we wanted them to do it in this manner.

Q. Prior to this case had you ever used this [273] practice of having key witnesses testify from summaries, rather than what I will call spontaneously?

A. Not to my recollection.

Q. Why was it used in this case?

A. Decision of the United States Attorney.

Q. Did he suggest it?

A. Yes.

Q. That was Joseph Valder?

A. Yes.

Q. What was your understanding of why it had to be done that way?

A. Primarily Mr. Valder believed that that was a more efficient way to present the evidence to the Grand Jury .

Q. More efficient in terms of controlling the content that the Grand Jury would get?

A. No.

Q. Well, that was one of the consequences of doing it that way, wasn't it?

A. That is what has been alleged, that that was a consequence.

[274]

Q. Well, that was in fact what happened, wasn't it?

A. That we controlled—

Q. The content.

A. Again, I didn't control what happened in the Grand Jury. I was not present in the Grand Jury. I don't now if one or all of these people had an opportunity to make additional statements in front of the Grand Jury.

And the Grand Jury had the opportunity, I would imagine, to ask any question they wished of this witness in the Grand Jury.

So I did not participate in any attempt to control what evidence was presented to the Grand Jury.

Q. You did to the extent that you drafted the summaries, right?

A. Again, I did not participate in any action to control what was presented to the Grand Jury.

Q. Let's focus now on your meeting with Mr. Bray and his counsel the night before he testified. Who drafted the witness summary for [275] Mr. Bray?

A. Me.

Q. And what time did the meeting with now Judge Huvelle and Mr. Bray begin; do you remember?

A. No.

Q. It went until about one in the morning, though, didn't it?

A. I believe it went after midnight.

Q. Mr. Valder left at some point, didn't he?

A. Yes.

Q. And at that point he left the negotiations with respect to what was going to be in Mr. Bray's statement up to you and Mr. Bray's counsel, didn't he?

A. I don't know if negotiations is a proper word. But he left it to us to finalize Mr. Bray's statement.

Q. Is negotiations an improper word for what went on that night?

A. I don't know if I would call it negotiation, but each side expressed their reason for the statement,

and the sentences within the statement [276] and the words within the statement and each side had an idea of what should be in the statement and there was give and take.

Q. When you came to that session, Mr. Bray's counsel reviewed the statement that you had prepared, right?

A. The original—the initial part of the visit, or the meeting, or the planned meeting was they reviewed the statement outside our presence, if I recall correctly.

Q. And then didn't Mr. Bray's counsel tell you in substance they thought the statement was slanted, misleading and not fairly complete?

A. I don't recall those words. I know that there was some testimony to that effect by Mr. Bray, but also that the statement was truthful.

Q. Wasn't there testimony to that effect by Mr. Bray's counsel?

A. She was not a sworn witness in that case.

Q. You were present that night with Mr. Bray and his counsel when they commented on your draft statement, right?

[277]

A. I was present, yes.

Q. And were you present in the courtroom when Mr. Bray testified at the trial?

A. Yes.

Q. And he indicated, I think, that the statement was misleading and one-sided; is that your recollection of the testimony?

A. I don't recall him saying it was misleading. I do recall maybe on cross-examination he agreed that it may have been slanted.

Q. Did they express that to you the night of the meeting before he testified to the Grand Jury?

A. There was debate on word structure, sentence structure. I do not recall them ever saying that it is misleading and slanted.

Q. You don't recall them ever telling you anything to that effect?

A. I don't have any recollection of them using those words. I knew that everything that was contained in that statement were words that came out of Frank Bray's mouth.

Q. Based on your recollection and notes of the [278] prior interviews you had with Mr. Bray?

A. Yes.

Q. The fact is that evening Mr. Bray would not sign that as his statement at first, isn't that right?

A. I don't recall us asking him to sign it that evening.

Q. Well, didn't they tell you, whether or not he signed it, he wouldn't adopt that as his statement as you first presented it to him?

A. They wanted changes made to the statement, and they wanted to make additions to the statement, and to the best of my recollection that decision was to be made the next day.

Q. You resisted having him change his statement from time to time that evening, didn't you?

A. Yes. There were certain statements that I knew he made, I knew they were true, and he wanted them removed because his attorney did not feel they sounded right.

Q. Once again, this was the witness' statement, right? It was going to be the witness' testimony [279] to the Grand Jury?

A. This was a summary of statements he made to postal inspectors and was going to be presented along with his testimony.

Q. Well, except for whatever questions or answers might be added at the end, if any, this was going to be his Grand Jury testimony? You understood that, didn't you?

A. If he believed that it was accurate and truthful, then he was going do adopt it in front of the Grand Jury and testify that it was accurate and truthful, yes.

Q. This was going to be his testimony about the underlying events, this wasn't going to be, "By the way, this is what I told the agents in prior interviews," right?

A. Probably a combination of the two. I don't recall how the first paragraph to the statement read, if it said this is a summary of statements made to postal inspectors. I am not sure.

Q. Did you have that kind of paragraph at the beginning of any of the witness' summaries?

[280]

A. I don't recall.

Q. You don't recall a single instance when you did, right?

A. I don't recall. I know from reading my transcript yesterday that I testified that these statements were summaries of interviews on given dates. I don't recall how the first paragraphs read. I haven't seen it since 1989.

Q. These were designed to be the witness' testimony to the Grand Jury about the underlying events, right?

A. It was to be the witness' testimony, yes.

Q. And was it or was it not your view that, because it was the witness' testimony, the witness had an absolute right to say it however he or she wanted?

A. I don't recall having a view. The prior statements were agreed to as being accurate and truthful and were adopted and presented. With Frank Bray there was a lot of discussion concerning his statement, and most of that came from his attorney, not from him.

[281]

Q. You understand that in our legal system people get to speak through their attorneys from time to time; don't you understand that?

A. But we were not in a courtroom that evening. His attorneys were speaking.

Q. Are you saying only in court is someone allowed to speak through an attorney?

A. No, I don't know if he has—what his legal interpretation is or what those attorneys were doing that night. But those attorneys were the ones that wanted to take out of his statement things that were truthful according to him, and things that he said and they had a desire, for whatever reason, to remove them from his statement.

Q. You said earlier, and I think you alluded to it just in that answer, that you objected to the statement being changed because they wanted to take out things that were true.

What is it that you have that allows you to decide what is truth and what is not truth?

A. It wasn't a matter of me to decide what is the truth. Frank Bray was sitting in that room [282] saying, Yes, I said that and, Yes, it is true, but his attorneys wanted to take it out.

Q. Are you saying that at that time, and of course Mr. Bray will tell us what he said, but I want your recollection of it, that he was saying that what they wanted changed in the statement was true; that at that time he was saying, when Ms. Huvelle said I want that out, that he was saying, "But it is true"?

A. It is my recollection that—

Q. Or are you saying—

A. —he acknowledged during the course of that discussion of taking it out that it was a true statement, and to the best of my recollection Ellen Huvelle agreed it was a true statement but she did not like it in the statement.

And if I objected, I may have objected during the course of that meeting, but the bottom line was that those things that they wanted changed were changed .

Q. Well, the fact is there was a paragraph that they wanted in that you wouldn't put in, right?

[283]

A. It wasn't my decision to put it in. It was decided the next day.

Q. That night you didn't agree to put it in, did you?

A. It was written on the statement to my recollection that night. I was not sitting there retyping the statement. To my recollection they wrote down what they wanted to add and we decided that decision would be made the next day.

Q. Who made it?

A. The decision was made among Joe Valder and Ellen Huvelle and I think his name was Chris Kearney.

Q. Did you participate in that discussion?

A. Possibly part of that discussion.

Q. Not possibly; you know you did, don't you?

A. With all those people present? I am not sure.

Q. Some combination of them?

A. I am sure I discussed it with Joe Valder. I don't know if I discussed it with Ellen Huvelle the next day.

[284]

Q. What was in the written-in paragraph that they wanted to add?

A. To the best of my recollection, and reading this transcript, it was language concerning what Bray believed Bill Moore and Robert Reedy believed.

Q. It was language that specifically said, "I don't think Bill Moore knew about the kickback scheme," right?

A. It was somehow related to that.

Q. And that didn't get put in the final summary that Mr. Bray read to the Grand Jury, did it?

A. To the best of my knowledge, it did not.

Q. If the witness acting with and through an attorney wanted something put in the witness' statement, why would you resist putting it in, unless you were trying to control the flow of what you thought the Grand Jury should see?

A. Again, the final decision was not mine as to what was included in Frank Bray's statements.

Q. I didn't ask you whose decision the final decision was.

You can have the question read back, if you

* * *

* * * * *

[310] would be more than 20 hours of interviews for Spartin?

A. It could be, yes.

Q. Of all these people, who did you spend the most time interviewing?

A. I couldn't say. I spent almost an equal time with these witnesses.

Q. And is it fair to say that you were using different what I will call investigative techniques to try to get Mr. Spartin to say that Bill Moore knew of the kickback scheme, or must have known?

A. We never tried to get Bill Spartin to say anything.

Q. Did you use other people's testimony to try to persuade him that he should say something?

A. I did not.

Q. Who did?

A. Around—late 1986 early 1987—I shouldn't even start with the date, I am not sure when. He to my recollection was given an opportunity to read statements of others.

Q. Whose statements?

[311]

A. To the best of my knowledge, he would have reviewed Gnau and Marcus. I am not certain if he read Voss's or Peterson's. I doubt if he read Bray's.

Q. When you say statements, were these statements that were taken as part of the ongoing Grand Jury investigation?

A. These were the statements that we have been discussing.

Q. The witness summaries that they read to the Grand Jury?

A. They were read to the Grand Jury, yes.

Q. If Mr. Moore or his counsel had called you and said can I see those statements, would you have let them see those statements back in 1986 or 1987?

A. I don't know. They didn't call and ask.

Q. Those were Rule 6(e) materials, weren't they?

A. A judge would have to decide whether or not those statements were Rule 6 (e) .

Q. In your own mind, they were, weren't they?

A. I don't recall if I thought about it at that

* * *

Supreme Court, U.S.
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No. 04-1495

In the Supreme Court of the United States

MICHAEL HARTMAN, ET AL., PETITIONERS

v.

WILLIAM G. MOORE, JR.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOINT APPENDIX

(VOLUME 2)

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 92CV2288

WILLIAM G. MOORE, JR., PLAINTIFF

v.

JOSEPH B. VALDER, ET AL., DEFENDANTS

Civil Action No. 93CV0324

WILLIAM G. MOORE, JR., PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

DEPOSITION OF MICHAEL HARTMAN
(Volume II)

Washington, D.C.
Thursday, Apr. 20, 2000

Reported by: Roxanne Easterwood, Court Reporter

* * * * *

[70]

* * * responsible for Reedy's knowledge and Bray's and a combination of the officers. So the culpability of the corporation could be argued could be higher than the individual's culpability. There was no question about elements of the offense.

Q. Well, look at your handwritten note again. Doesn't it say, "Even where no single employee had knowledge that all elements necessary to complete the offense had occurred?" That's what it says, right?

A. That's what it says, yes.

Q. If you look at page one of exhibit 11, your first basis there, number one, will you read that?

A. "Independent of Voss/ GAI corporation and it's PAC funded a media and political campaign to discredit USPS management and cause financial harm to USPS. For example, staged questions and testimony before congress. Frost amendment to freeze USPS appropriations bill."

Q. You drafted that language there, didn't [71] you?

A. I believe so, yes.

Q. What was the media and political campaign to discredit USPS management and cause financial harm that you were referring to there?

A. A and B. I was referring to staged questions and testimony before congress and the Frost amendment to freeze USPS appropriations bill.

Q. You used the words, "for example," there, right?

A. Yes

Q. Those are two examples you give?

A. Yes.

Q. That was not meant to be the exhaustive list of what you were referring to, was it?

A. I don't know of any other examples as I sit here now, but there may have been other examples.

Q. What was the media aspect you were referring to in line two of paragraph one?

A. I can only say that the media supported [72] the political portion which supported what was going on with Peter Voss on the inside.

Q. Were you referring to Mr. Chapp's comment that we reviewed earlier where he had told Mr. Moore to, "get the media off our back?"

A. No.

Q. Did you discuss with Mr. Chapp that Mr. Moore was involved in taking REI's case to the media?

A. Did I discuss that with Mr. Chapp?

Q. Yes.

A. The only recollection I would have would be that comment that he made during the interview that I wrote the note.

Q. Did you discuss with anybody during your investigation what activities Mr. Moore and REI were involved in with the media?

A. Yes.

Q. You discussed it with a number of people, didn't you?

A. Well, we gathered—if you review the file, you see that we gathered some newspaper [73] articles. So, yeah, we discussed what was going on in the media.

Q. You subpoenaed Hill and Knowlton too, didn't you?

MR. MONTAGUE: I'm going to object. I'm going to object that, again, you're getting into 6e areas.

MR. POLTZ: It's public. It came out at the trial. That's not protected.

MR. MONTAGUE: Failure to subpoena to Hill and Knowlton?

MR. POLTZ: That's my understanding.

MR. MONTAGUE: It's not mine. That's the only problem I've got.

BY MR. POLTZ:

Q. You interviewed Neal Gregory, didn't you?

A. Yes.

Q. Who was he employed by?

A. Hill and Knowlton.

Q. You discussed with Neal Gregory his activities on behalf of REI with respect to the media and congress, didn't you.

A. That may be among the things we discussed with him, yes.

Q. You gathered extensive newspaper clippings about the various aspects of REI's involvement in trying to sell multi-line OCR machines to the USPS, didn't you?

A. The news clippings that I recall are clippings concerning the Casey appointment, what came after the Casey amendment appointment. There may have been some conversation on automation.

Q. Well, what was it that you were referring to when you said a media and political campaign? Describe to me the media aspects of that you're referring to.

A. I don't recall specifically what particular media articles I was speaking of or had in mind at the time. As I said, there was some media.

Q. What was the political campaign that you were referring to that was the basis for an indictment?

[75]

A. I didn't say it was a basis for an indictment.

Q. Well, the top of the page says, "arguments for indicting the corporation," doesn't it?

A. That's what it says, yes.

Q. The word "basis" is just to the left of that paragraph one, isn't it?

A. Yes.

Q. What was the political campaign you were referring to in paragraph one there?

A. Again, the basis does not mean that each individual item or collectively in themselves are the basis for an indictment. They're a basis for the conclusion above that this is not just the actions of one persons or two persons. These were corporate funded actions that involved individuals other than Moore and Reedy so that it was a corporate strategy. So the basis—and these numbered paragraphs relate to proof or evidence that this is a corporate strategy as opposed to simply the actions of one person or two people.

[76]

Q. What was the political campaign you're referring to there?

A. I gave you the examples. There were certain actions in congress that assisted the goal of the conspiracy, being the award of a contract to REI, and they took certain actions that assisted the conspirators in arriving at that goal.

Q. You would agree that Mr. Moore had an absolute right to tell members of congress that he believed his company's machine was better than anybody else's, don't you?

A. I don't know if it's an absolute right. He has a right to do that.

Q. You know that is a First Amendment right?

A. I'm not saying that it is or is not a First Amendment right. I'm not an expert on the First Amendment, but he certainly, I agree, has a right to above board present his story or his wishes to the—to his congressman.

Q. When you say above board, are you saying [77] that in your eyes as a postal inspector when he is engaged in a postal procurement he cannot meet privately with congressmen?

A. No, I'm not saying that.

Q. What did you mean when you said above board?

A. That it is done honestly and with the disclosure that is required for campaign contributions, et cetera.

Q. You never found any evidence that any federal election laws were violated, did you?

A. I didn't look for evidence of federal. I don't know the federal election laws.

Q. You agree that any citizen can express his opinion to his congressmen even if the Postal Service doesn't agree with the opinion?

A. Yes, they can express their opinion.

Q. And that opinion would include that my product is better than somebody else's that the Postal Service is buying?

A. Yes.

Q. And you would agree that a citizen has [78] an absolute First Amendment right to go to the media or to congress and say Postal Service management is stupidly wasting money?

A. Again, I don't know what you mean by absolute. As long as it's done honestly and without corruption, yes, they have that right.

Q. You said as long as it's done honestly. Does that mean if you determine that somebody says something in the media that's false that the Postal Service can have them indicted?

A. The Postal Service doesn't indict anybody, but—you would have to give me an example of what you mean by they're saying something that's false.

Q. Let's say if Mr. Moore had gone to the media and said, "we have a better machine and we can deliver it and the Postal Service is wasting our money by going—pursuing this Zip+4 strategy," would you, based on what you knew at the time, say that those were false statements?

MR. MONTAGUE: Object to form.

THE WITNESS: No, I would not consider [79] that a false statement.

By MR. POLTZ

Q Would you agree that that was a perfectly protected First Amendment communication?

A. He had the right to do that, yes.

Q. Did Mr. Chapp, when he was talking to you about telling Mr. Moore to get the media off our back, did he ever tell you that Moore had ever said anything in the media or REI had ever said anything in the media that was false or illegal?

A. No, I don't recall him saying that.

Q. You're not aware of anything that REI or Mr. Moore ever did with regard to a media strategy that was false or illegal, are you?

A. I don't know if it was false or illegal. He concealed things when he did media interviews con-